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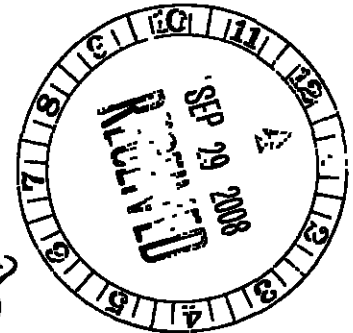
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September 29, 2008

The Honorable Anne K. Quinlan, Acting Secretary
Surface Transportation Board
395 F Street, S.W.
Washington, DC 20423

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Re Finance Docket No. 35160, *Oregon International Port of Coos Bay—Feeder Line Application—Coos Bay Line of the Central Oregon & Pacific Railroad, Inc.*

Dear Secretary Quinlan

Enclosed for filing in the above-captioned proceeding are the following:

1. An original and 10 copies of the Central Oregon & Pacific Railroad, Inc.'s Motion for Leave to File Supplemental Response to Reply of Oregon International Port of Coos Bay;
2. An original and 15 copies of the Supplemental Response of Central Oregon & Pacific Railroad, Inc. ("CORP") to Reply of Oregon International Port of Coos Bay, a CD with the Supplemental Response in pdf format, and a disk containing an electronic version in Word format.

Please acknowledge receipt of the enclosed documents for filing by date-stamping the extra copies and returning them to our messenger. If you have any questions, please contact the undersigned counsel.

Sincerely,

Terence M. Hynes

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Enclosures

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

223688

Oregon International Port of Coos Bay – Feeder Line
Application – Coos Bay Line of the Central Oregon &
Pacific Railroad, Inc

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) Finance Docket No. 35160
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**SUPPLEMENTAL RESPONSE OF
CENTRAL OREGON & PACIFIC RAILROAD, INC.
TO REPLY OF OREGON INTERNATIONAL PORT OF COOS BAY**

**ENTERED
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Dated September 29, 2008

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**SUPPLEMENTAL RESPONSE OF
CENTRAL OREGON & PACIFIC RAILROAD, INC.
TO REPLY OF OREGON INTERNATIONAL PORT OF COOS BAY**

The Central Oregon & Pacific Railroad, Inc. ("CORP") respectfully submits this Supplemental Response to the Reply of the Oregon International Port of Coos Bay (the "Port") filed in the above-captioned proceeding on September 12, 2008 (the "Port's Reply").¹ The Port's Reply raises for the first time several issues that were not – but could have and should have been – addressed in the Port's July 11, 2008 Feeder Line Application and/or the Comments filed by the Port on August 28, 2008 in the proceedings on CORP's Abandonment Application in Docket No. A13-515 (Sub-No. 2), *Central Oregon & Pacific Railroad Co., Inc. – Abandonment and Discontinuance of Service – In Coos, Douglas and Lane Counties, OR*. For example, the Port's newly announced unwillingness to utilize credit facilities that the Port previously represented were available to fund the acquisition, rehabilitation and operation of the Coos Bay Subdivision casts serious doubt on whether the Port is a "financially responsible person" as required by the Feeder Line statute (49 U.S.C. § 10907(a)). The Port also argues – for the first time – that the Board should require CORP not only to repair the tunnel conditions that led to the embargo, but to contribute nearly \$10 million in additional funds to an "escrow" account to pay for major

¹ CORP has simultaneously filed a Motion for Leave to File Supplemental Response, requesting that the Board grant CORP leave to file this Supplemental Response in light of several important issues raised – for the first time – in the Port's Reply.

improvements, including bridge upgrades, tie replacement and track resurfacing, that would upgrade the entire Coos Bay Subdivision to FRA Class 2 status.

Moreover, the Port intentionally withheld from its August 28, 2008 response to CORP's Abandonment Application evidence and argument relating to issues (including the NLV of the Abandonment Segment and the Port's claim that the embargo of the Coos Bay Subdivision constituted an unlawful abandonment) that should have been presented to the Board in that proceeding. Instead, the Port proffered that evidence as "rebuttal" in this feeder line proceeding. This sandbag tactic was clearly designed to deny CORP any opportunity to respond to the Port's evidence. Apparently assuming that its strategy would, in fact, shield such evidence from scrutiny, the Port submitted a Reply that contains contradictions of its prior testimony, highly misleading statements, outright falsehoods and a supposed "bid" that represents a blatant conflict of interest. +

The Board should not countenance such an abuse of its procedures. In this Supplemental Response, CORP addresses certain matters raised by the Port's Reply that go to the heart of the issues presented to the Board for decision in these proceedings.

I. THE PORT'S REPLY RAISES SERIOUS DOUBT AS TO WHETHER THE PORT IS A "FINANCIALLY RESPONSIBLE PERSON."

In its Feeder Line Application and Supplement, the Port represented that it had access to approximately \$31.5 million to fund the purchase, rehabilitation and operation of the Coos Bay Subdivision. The funds identified by the Port included \$7 million in cash reserves (Feeder Line Application at 12, V.S. Bishop at 67), a loan commitment from Umpqua Bank in the amount of \$12,500,000 (*id.* Exhibit 2, Attachment 1); a \$4 million grant from the Oregon Department of Transportation (*id.*: Supplement to Feeder Line Application at 11); and a \$8 million grant under the federal SAFETIA-LU program (previously designated for improvements to the Coos Bay

Bridge) for which the Port was seeking a redesignation (*id.*). Based upon those representations, CORP concluded that “it appears that the Port can well afford to pay the constitutional minimum value of the Coos Bay Subdivision and perform any necessary rehabilitation of the Line ” See Response of CORP To Feeder Line Application (filed August 29, 2008) (“CORP Response”) at 8. Accordingly, CORP did not challenge the Port’s assertion that it qualified as a “financially responsible person.” Feeder Line Application at 11.

However, the Port’s Reply radically alters the Port’s prior representations regarding the amount that it is able and willing to commit to the purchase, rehabilitation and operation of the Coos Bay Subdivision. Specifically, while the Port confirms the availability of its \$7 million in cash reserves and the \$4 million state grant, it now concedes that the \$8 million in SAFETEA-LU funding upon which it previously relied “has not yet been redirected by Congress” and that such redesignation may not be forthcoming soon given Congress’ current focus on other issues. Port’s Reply at 6. More importantly, the Port’s Reply states that:

“[t]he Port continues to have a \$12.5 million loan commitment from Umpqua Bank. (Citation omitted.) However, as the Port has learned more about the Line through its review of discovery documents, its on-site visit in mid-August, and its development of financial projections, the Port now believes that it would not be wise to incur long-term debt in the acquisition of the Line. With the rehabilitation costs and operating losses expected on the Line, the debt service required on a multi-million dollar loan would not be financially prudent and would likely not be sustainable for the Port ”

Id. (emphasis added). In other words, the Port now takes the position that, if the Board approves its Feeder Line Application (and the Port or its designated operator thereby becomes a common carrier) it is not willing to borrow funds under its \$12.5 million credit facility to support the rehabilitation and operation of the Coos Bay Subdivision

The Port's Reply fundamentally alters its prior representations that it had approximately \$31.5 million available to support its feeder line proposal, and that the Port was "willing to spend its last dime on saving rail service." See Supplement, V.S. Bishop at 10. See also August 21, 2008 Hearing Tr. at 176 (Bishop) (acquiring the line is "a matter of survival . . . it may lose money but the alternative is much worse"). Indeed, the current uncertainty regarding the redesignation of the \$8 million SAFETEA-LU grant, and the Port's unequivocal statement that, having learned more about the Coos Bay Subdivision, it is not willing to incur debt to acquire and rehabilitate the line, raise serious doubt as to whether the Port has met its burden of showing that it is a "financially responsible person." Taking the Port at its word, it appears that the only sources of funds that the Port is both able and willing to invest in the line at this time are the \$7 million in cash reserves and the \$4 million grant from the State of Oregon. These sources of funds, which total \$11 million, would not be sufficient to cover the purchase price for the line even at the Port's grossly understated NLV of \$14,233,031 – much less to pay the actual NLV (approximately \$26.8 million) or to rehabilitate and operate a line that is expected to experience continuing annual losses in excess of \$1.5 million. Thus, based upon the Port's own statements, the record no longer supports a finding that the Port is a "financially responsible person" within the meaning of Section 10907.

Moreover, the Port's refusal to incur debt to rehabilitate the line because such an investment "would not be financially prudent and would not likely be sustainable" in light of "the rehabilitation costs and operating losses expected on the Line" (Port's Reply at 6 (emphasis added)), fatally undermines its assertion that CORP violated its common carrier obligation by declining to make the very same type of investment to rebuild the tunnels on the line. As CORP has previously shown, it is well-established that a railroad "cannot legitimately be required to

expend money to rehabilitate a line where it will lose money on the operation.” *Michael H Meyer, Trustee v N Coast R R. Auth d/b/a Nw Pac R R.*, STB Fin. Docket No. 34337 (served July 27, 2005) (citing *Chi & Nw Transp Co v Kalo Brick & Tile Co*, 450 U.S. 311, 325 (1981)) See also *Purcell v United States*, 315 U.S. 381, 385 (1942) (if operating and rehabilitation costs “cannot be justified in terms of the reasonably predictable revenues, . . . the expenditures are wasteful” and contrary to “a stated purpose of the Transportation Act”); *R R Comm’n of Tex v E Tex R Co*, 264 U.S. 79, 85 (1924) (“to compel [a railroad] to go on at a loss” would effect an unconstitutional taking of property) In judging the credibility of the Port’s assertion that CORP should be required to pay for the cost of rehabilitating the line, the Board should give greater weight to the Port’s actions – or, more precisely, its refusal to act by investing funds to rehabilitate the line – than its unsupported and highly inflammatory rhetoric.

Finally, the Port contends that CORP’s Response “seems to imply that the Board should set the NLV of the Line at a high level” merely because the Port previously represented that it had access to \$31 million. According to the Port. “such an argument is specious.” Port’s Reply at 6. CORP’s Response neither argued nor implied that the Board ought to set the NLV of the Feeder Line Segment “at a high level” on the basis of the Port’s finances To the contrary, CORP demonstrated, based upon well-established precedent, that the NLV for the line is approximately \$26.8 million. Indeed, it is the Port that now “seems to imply” that the Board should set the NLV at an artificially low level to spare the Port the need to incur any debt to acquire, rehabilitate and operate the line Of course, any suggestion that the Board should adjust the NLV to accommodate the Port’s notion of what is “financially prudent” would be equally specious.²

² In a recent interview, Martin Callery, the Port’s Director of Communications, indicated that the

II. THE PORT'S NEW CLAIM THAT CORP SHOULD BE REQUIRED TO FUND A MAJOR OVERHAUL OF THE LINE SHOULD BE REJECTED.

The Port waited until its Reply to unveil a breathtaking new demand – *i.e.*, that the Board force CORP to pay \$12 699 million into an “escrow fund” to pay for a major rehabilitation of the track, bridges and tunnels on the Coos Bay Subdivision Port’s Reply at 71 While the Port’s Feeder Line Application argued that CORP should make the tunnel repairs needed to lift the embargo (at an approximate cost of \$2.9 million) – a demand that was as unprecedented as it was unwarranted – the Port never hinted that CORP ought to be responsible for other improvements to the line. Instead, the Port intentionally waited until its Reply (which, the Port assumed, CORP would have no opportunity to contest) to demand nearly \$10 million in additional “damages” for a variety of projects including bridge upgrades, tie replacement and track resurfacing

The Port’s eleventh-hour surprise is a transparent attempt to acquire the line for a fraction of its constitutional minimum value, and to shirk its obligation (as a purchaser under the Feeder Line statute) to assume financial responsibility for rehabilitating the line. The Port’s unprecedented demand should be rejected for at least four reasons: (1) it is improper rebuttal and an abuse of the Board’s processes, (2) it asks the Board to violate the governing statute, the Constitution and its prior precedents by effectively ordering a sale of the line for less than its net liquidation value (“NLV”); (3) the track and bridge improvements for which the Port demands CORP pay are not necessary to reopen the line or to permit operations at FRA Class 1 standards (as contemplated by the statute); and (4) there is no evidentiary support for the Port’s claim that CORP “neglected” the line – to the contrary, the record shows that CORP invested extraordinary

Port would, in fact, utilize its line of credit in connection with the proposed feeder line transaction See Exhibit 3. This public statement in another forum suggests that the contrary representation in the Port’s Reply was, in fact, made for the purpose of influencing the Board to “discount” the NLV of the line or otherwise to reduce the cost to the Port of acquiring, rehabilitating and operating the line.

sums for both regular maintenance and capital expenditures on the line, even as losses from operations were increasing

A. The Port's Request For An "Escrow" Of Funds To Pay For Track And Bridge Improvements Constitutes Improper Rebuttal, And Should Be Rejected.

As an initial matter, the Port's demand that the Board establish an "escrow" fund to cover the cost of improvements to track and bridges on the Coos Bay Subdivision should be rejected out of hand as improper rebuttal. The Port's Feeder Line Application made no claim whatsoever regarding track and/or bridges, stating only that "the Board should order CORP to repair the tunnels to a serviceable condition before consideration of the abandonment or the Board should order CORP to make the repairs or compensate the Port for such tunnel repairs as part of the feeder line acquisition"). *See* Feeder Line Application at 51. Nor did the Port ever raise this issue in the proper forum — *i.e.*, as part of its Comments in the abandonment proceeding. To the contrary, the Port's Comments in that proceeding suggested only that an "escrow" fund be established for "Board-approved tunnel repairs." *See Docket No. AB-515 (Sub-No. 2)*, Port Comments filed August 28, 2008) at 24-25.

The Port's failure to raise this claim in timely fashion is especially egregious given the fact that it is predicated almost entirely on a list of track improvements (and costs) set forth in a PowerPoint presentation made by CORP on November 14, 2007 in connection with CORP's effort to develop a public/private partnership solution to the problems facing the Coos Bay Subdivision (the "CORP 2007 Partnership Presentation"). The Port clearly had access to that report prior to its Reply in this proceeding — indeed, the report was appended to the Port's June 3, 2008 filing in the *Show Cause Proceeding*. *See* Finance Docket No. 35130, *Central Oregon & Pac. R.R., Inc. — Coos Bay Rail Line*, Port Reply (filed June 3, 2008), Exhibit 23. The reports on bridge conditions that the Port appends to its Reply likewise were provided by CORP in

discovery on July 28, 2008 – a full month before the Port filed its Comments in the abandonment proceeding. If the Port had any concerns about the condition of bridges or track on the Abandonment Segment, it should have raised those arguments in the abandonment proceeding. Waiting until its final filing in this proceeding to raise arguments based on documents that were in its possession long before it filed its abandonment Comments is plainly improper.

The Port does not even attempt to explain why it waited until its Reply in this proceeding to assert this claim – indeed, there can be no logical explanation for its delay other than gamesmanship and a desire to unfairly prejudice CORP. It is well settled that the Board does not permit parties “to present new arguments and evidence on rebuttal.” *Conrail Abandonment in Chicago, IL. In Re Offer of Fin Assistance*, Docket No. AB-167 (Sub-No. 970N), 1987 WL 98398 at *4 (May 1, 1987) (“*Conrail*”) (refusing to permit offeror to reduce salvage value by sales commission where argument was first raised on rebuttal); see *CSX Transp — Discontinuance—At Memphis, in Shelby Cty, TN*, STB Docket No. AB-55 (Sub-No. 618) (Oct 28, 2002) (refusing to consider additional cost evidence submitted on rebuttal by applicant for discontinuance authority)³ Here, the Port should have raised its claim for additional escrow funds for track and bridge improvements in its Comments in the abandonment proceeding. Its newly asserted claim for such an escrow in this proceeding should be rejected “[i]n order to protect the integrity of the process.” *Id.* As in *Conrail*, the Port’s “change of position at so late a time and in the context of the expedited time frames of these proceedings cannot be countenanced.” *Conrail*, 1987 WL 98398 at *4.

³ See also *North American Freight Car Ass’n v BNSF Ry Co.*, STB Docket No. 42060 (Sub-No. 1) (Jan 26, 2007) (“We may not consider this new argument, raised for the first time on rebuttal, because BNSF did not have the opportunity to address it.”); *Duke Energy v Norfolk S Ry Co.* STB Docket No. 42069 (Nov 6, 2003) (“the party with the burden of proof . . . must present its full case in chief in its opening evidence. . . . [i]t may not hold back to see the railroad’s reply evidence before finalizing or supporting its own case”).

B. There Is No Legal Basis For Requiring CORP To Fund The Cost Of Track Or Bridge Improvements For The Port's Benefit.

The Port's new claim that CORP should pay approximately \$10 million for various improvements to the track and bridges on the Coos Bay Subdivision represents an audacious case of overreaching. Indeed, even the Port's initial demand that the Board effectively reduce the N.I.V of the line by the cost of tunnel repairs was both unprecedented and utterly at odds with the U.S. Constitution, the governing statute and Board precedent. *See* CORP Response at 55-59. Under the feeder line statute, the Port must assume responsibility for rehabilitating the line – there is no statutory basis for the Board to shift that cost to the incumbent carrier. The fundamental weakness of the Port's position in this regard is betrayed by its exclusive reliance on *Railroad Ventures, Inc. Abandonment Exemption—Between Youngstown, OH and Darlington, PA*, AB-556 (Sub-2X) (Apr. 28, 2008) and *Kansas City So. Ry. Co.—Abandonment Exemption—Line in Warren C'ty., MS*, STB Docket No. AB-103 (Sub-No. 21X) (May 20, 2008) – two cases that provide no support for the Port's demand that CORP substantially upgrade the line from its pre-embargo status before selling it to the Port. *See* CORP Response at 57-58; CORP Abandonment Rebuttal at 29-31 (distinguishing *Railroad Ventures* and *Warren County*). For the same reasons that the Board should deny the Port's request that CORP be required to absorb the cost of tunnel repairs to reopen the line, the Board should likewise reject the Port's outrageous demand that CORP pay for a wholesale rehabilitation and upgrade of the Coos Bay Subdivision for the Port's benefit.

C. None Of The Improvements For Which The Port Seeks An "Escrow" Is Necessary To Reopen The Line Or To Operate It At FRA Class 1 Standards.

The Port's demand that CORP pay for \$10 million in track and bridge improvements should be rejected because none of the projects identified by the Port is necessary to reopen the line or to operate it at FRA Class 1 standards. It is well-settled that rehabilitation costs do not

include any expenses that are “not necessary to reopen the line.” *Idaho N & Pac R R Co — Abandonment Exemption—in Wallowa & Union Cty, OR*, STB Docket No. AB-433X, slip op. at 7 (Mar. 12, 1997). Acceptable rehabilitation costs are those costs necessary to restore the track to minimum FRA Class 1 safety standards. *See* 49 C.F.R. § 1152.22(c). The Board does “not normally accept rehabilitation expenses in excess of those necessary to bring a line up to FRA Class 1 standards unless there are circumstances that justify the additional cost.”⁴ *See Central R R of IN—Abandonment Exemption—in Dearborn, Decatur, Franklin, Ripley, and Shelby Cty, IN*, STB Docket No. AB-459 (Sub-No. 2X), 1998 WL 221442 at *8 (Aug. 11, 1998); *SWKR Operating Co —Abandonment Exemption—in Cochise Cty, AZ*, STB Docket No. AB-441 (Sub-No. 2X), 1997 WL 61220, at *5 (Feb. 14, 1997) (“Rehabilitation expense is allowed only to the extent necessary to bring a line up to Federal Railroad Administration (FRA) class 1 standards, *i.e.*, the standard that a railroad must meet in order to operate a train at 10 miles per hour.”); *Staten Island Railway Corp —Abandonment*, ICC Docket No. AB-263 (Sub-No. 3), 1991 WL 263576, at *8 (Nov. 29, 1991) (rejecting claimed rehabilitation expenses that would exceed FRA Class 1 standards).

At the time of the embargo, the Coos Bay Subdivision was operating with a combination of FRA Class 1 and Class 2 track. *See* Exhibit 2 (CORP Daily Operating Bulletin for September 30, 2007). *See also* CORP Response, V.S. Lundberg at 7, V.S. Patton at 3. Given the very low volume of traffic on the line – an average of less than 20 cars per day – and the fact that

⁴ The circumstances under which rehabilitation above minimum FRA Class 1 standards may be justified are limited to instances where such rehabilitation will lead to operating efficiencies that offset the expense. *Id.* (“Because of the substantial investment required, there must be a justification based on savings in operating expenses before we can accept such an additional cost.”). As discussed below, in the instant case, an upgrade of the entire line to FRA Class 2 standards is neither necessary to serve existing traffic nor justified by the traffic and revenues on the line.

the vast majority of that traffic consists of non-time sensitive forest products shipments, there was no need (or economic justification) for CORP to upgrade the entire Coos Bay Subdivision to FRA Class 2 standards. Likewise, if the Port acquires the line, a well-maintained FRA Class 1 physical plant would be more than adequate to serve the existing traffic base

The Coos Bay Subdivision was embargoed because of dangerous conditions in three tunnels on the line (Tunnel Nos. 13, 15 and 18). The only work necessary to reopen the line is the repair of Tunnels 13, 15, and 18, at an estimated cost of \$2.86 million. See CORP Response in *Show Cause Proceeding*, Exhibit 6 at 11 (Shannon & Wilson Report). Once the tunnels have been repaired and minor debris (such as fallen trees and weeds) has been cleared off the tracks, rail service can be restored. No further rehabilitation would be required to reinstitute operations at FRA Class 1 (10 MPH) standards.

This assessment of the extent of repairs required to reinstitute service is confirmed by recent press reports regarding the results of the supplemental inspection of the Coos Bay Subdivision authorized by the Board on September 10, 2008. Those reports indicate that, following the inspection, Martin Callery, Director of Communications for the Port, advised the media that “[the Port’s] inspectors have determined that critical pieces of the 111-mile line are in no worse shape than they were last September, when the railroad’s owner halted traffic because of safety concerns.” See Exhibit 3, Associated Press “Abandoned Ore. Rail Line Getting Pricier” (September 23, 2008) (emphasis added); The Register-Guard: “Rail line in good shape, but may cost port a lot more to buy” (September 23, 2008), KTVZ.com: “Abandoned Ore rail line getting pricier (September 23, 2008). Thus, the Port’s recent further inspection did not reveal any substantial additional conditions that would need to be addressed prior to reopening the line

Nor did CORP's Abandonment Application identify any necessary rehabilitation other than the \$2.9 million in short-term tunnel repairs recommended by Shannon & Wilson. As required by the Board's regulations, the Abandonment Application identified all work "necessary to upgrade the track to minimum Federal Railroad Administration class 1 safety standards." 49 C.F.R. § 1152.22(b). The Port – which had in hand both the results of its August 13-15 inspection of the line and the CORP 2007 Partnership Presentation – had ample opportunity to address the issue of required rehabilitation expenses in its August 28, 2008 Comments in the abandonment proceeding. But the Port's Comments did not suggest that CORP had understated necessary rehabilitation costs or that anything other than tunnel repairs would be necessary to reopen the line.

In its Reply, the Port contends that "CORP has previously asserted that \$12.699 million is necessary to reopen the Line." Port's Reply at 71. This statement is a gross misrepresentation. The Port bases this assertion on the CORP 2007 Partnership Presentation – indeed, the Port's estimates for bridge work, tie replacement and track resurfacing are lifted directly from that document. Compare Port's Reply at 71 with Port's Reply, Exhibit 25 at 5. However, the very page from which the Port derives its estimates indicates clearly that all of the track and bridge work for which the Port seeks compensation was proposed by CORP to address the "long[] term condition" of the line and to "remove some 10 mph slow orders and return track speed to 25 mph for a while," not to permit reopening of the line. See Port's Reply, Exhibit 25 at 5. The CORP 2007 Partnership Presentation made clear that only the \$2.9 million in short-term tunnel repairs identified by Shannon & Wilson were necessary "to stabilize tunnels 13, 15 and 18 to reopen the line." See *id.* at 8.

The CORP 2007 Partnership Presentation contains no suggestion that any of the additional track and bridge improvements for which the Port would have CORP pay are necessary to reopen the line. The tie replacement and surfacing projects described in that document were intended to bring those segments of the line that were operating at FRA Class 1 standards up to FRA Class 2 status. *See id* at 5 (tie replacement would “remove some 10 mph slow orders and return track speed to 25 mph”).⁵ None of the bridge repairs for which CORP sought funding were prerequisites to reopening the line or operating it at FRA Class 1 standards. Likewise, the 2007 OSMOSE bridge condition report on which the Port relies makes a clear distinction between “Priority 1” repairs that would require CORP to “stop operation[s]” until repair was complete and other less urgent repairs. *See* Port’s Reply, Exhibit 30 at CORP001299. Indeed, none of the OSMOSE reports submitted by the Port or by CORP identifies any “Priority 1” condition on any bridge on the Coos Bay Subdivision during the 2001 – 2007 period. *See* Port’s Reply at CORP001299-1371; *Docket AB-515 (Sub-No. 2)*, CORP Reply, V S Lundberg, Attachment 6. These documents demonstrate that no bridge repairs would be necessary for the Port to reopen the line or to operate it at FRA Class 1 standards. While ongoing operation of the line by the Port would require ordinary bridge maintenance (and, at some future point in time, rehabilitation of certain bridges), those future expenses are not

⁵ It is well settled that tie replacement programs intended to improve track to standards exceeding FRA Class 1 are not necessary rehabilitation expenses. *See Staten Island Railway Corp.—Abandonment*, ICC Docket No. AB-263 (Sub-No. 3), 1991 WL 263576, at *8 (Nov. 29, 1991) (refusing claimed rehabilitation expenses for tie replacement that would exceed FRA Class 1 standards); *Union Pac. R.R. Co.—Abandonment in Fremont & Teton Cties., ID*, ICC Docket No. AB-33 (Sub-No. 56), 1989 WL 246790, at *10 (Oct. 31, 1989) (denying claim that tie replacement was necessary rehabilitation in absence of evidence that ties were outside FRA Class 1 standards); *Yreka W. R.R. Co.—Abandonment in Siskiyou Cty., CA*, Docket No. AB-246 (Sub-No. 1), 1987 WL 99810, at *3 (Nov. 3, 1987) (rejecting abandonment applicant’s attempt to include tie replacement program as rehabilitation cost without evidence that tie replacement was necessary to restore track to FRA Class 1 standards).

“rehabilitation necessary to reopen the line.” *See Decatur City Comm’rs v Cent R R Co of IN.*, STB Fin. Docket No. 33386, 2000 WL 1456906 (refusing to include bridge rehabilitation in rehabilitation cost because “although there is a need for routine bridge maintenance, no rehabilitation was necessary to reopen the line”); *Paducah & Louisville Ry. Inc —Abandonment Exemption—in Muhlenberg Cty, KY*, STB Docket No. AB-468 (Sub-No 1X), 1996 WL 563579, at *2 (Oct. 4, 1996) (finding that repair costs for bridges in “fair to good condition” were “properly classified as normalized maintenance and would not be considered rehabilitation”) ⁶

In short, if tunnels 13, 15 and 18 are repaired, service on the line can be restored immediately without any of the additional track and bridge work demanded by the Port Yct. the Port demands that CORP rebuild the entire Coos Bay Subdivision to FRA Class 2 standards (a level that is neither required nor economically justified by existing traffic) for the Port’s sole benefit. Granting the Port’s unprecedented demand would be contrary to the feeder line statute, effect an unconstitutional taking, and create a powerful disincentive to future investment in marginal rail lines. *See* CORP Response at 55-59.

D. CORP Did Not Neglect Maintenance On The Line.

Putting aside hyperbole and inflammatory rhetoric, the simple truth is that the Port has proffered no actual evidence to support the fundamental premise for its new “escrow” claim — *i.e.*, that CORP “neglected” to maintain the Coos Bay Subdivision. As CORP’s prior filings have shown, CORP invested heavily in both ordinary maintenance and extraordinary capital expenditures on the line even after it became unprofitable. *See* CORP Response at 64-66.

⁶ It is worth noting that bridge work is not necessary for operation at FRA Class 1 standards. Indeed, there is no specific bridge rehabilitation requirement for FRA Class 1 status. *See Decatur Cty Comm’rs v Cent R R Co of Ind.*, STB Fin. Docket No 33386 (Sept 28, 2000); *Southrail Corp —Abandonment—Between Whistler Station, AL & Waynesboro, MS*, ICC Docket No. AB-301 (Sub-No. 6), 1990 WL 288230, at *37 (June 4, 1990).

Indeed, between 2002 and 2007, CORP's combined ordinary maintenance and capital investment spending on the Coos Bay Subdivision consumed 49.4% – nearly half – of gross revenues from the line. *See id.* at 65.⁷ That compelling (and undisputed) evidence belies the Port's bald assertions about "neglect" of the line. The Port's only response to these facts is to ignore them, and to blindly assert that any bridge, tunnel or track rehabilitation or improvement that may be needed – even in the longer term – must necessarily be the product of "neglect." This fallacy ignores the reality of rail operations, particularly in the rugged terrain in which the Coos Bay Subdivision is located.

Any claim that CORP violated its "common carrier obligation" prior to the embargo is belied by the fact that CORP provided rail service to shippers from the date it acquired the Coos Bay Subdivision in 1994 until the embargo on September 21, 2007. The fact that CORP provided such service is self-evident proof that it maintained the line to the level necessary to meet its common carrier obligation. The Port's unsupported assertion that CORP allowed the line to fall into a state of disrepair over the years is refuted by the testimony of witness Patton (a track inspector on the Coos Bay Subdivision during the periods in which both CORP and SPT owned and operated the line) that, "[a]t the time the line was embargoed in September 2007, it consisted of a mix of FRA Class 2 and Class 1 track – an overall condition very similar to that which existed at the time CORP purchased the line from SPT." *See* CORP Response, V S

⁷ The Port's claim that "CORP's numbers are unsupported" simply because CORP does not maintain branch-specific expense data in the normal course of business (Port's Reply at 71, n.13) should be rejected out of hand. As the Board knows, few (if any) short line carriers maintain such data. Moreover, the Port's assertion that "CORP has refused to provide system-wide data to allow the Port to verify the Port's claims" (*id.*) is an outright falsehood. CORP produced its systemwide traffic, revenue, detailed expense and capital expenditure data to the Port on August 26, 2008, well before the Port filed its Reply. Those same data are also set forth in Attachment 2 to the Verified Statement of Mr. Lundberg filed on August 29, 2008 in connection with the CORP Response in this proceeding.

Patton at 3. Mr. Patton's testimony is confirmed by CORP's Daily Operating Bulletin for September 30, 2007, which shows that at the time of the embargo the line included some segments with slow orders setting a maximum authorized speed of 10 miles per hour – the FRA Class 1 standard – and other segments with authorized speeds above 10 miles per hour – the FRA Class 2 standard. All told 62.1 miles (56%) of the Coos Bay Subdivision was Class 1 track and 48.9 miles (44%) of the line was Class 2 track. See Exhibit 2 at 3-4.⁸

Moreover, recent press reports regarding the results of the supplemental inspection of the Coos Bay Subdivision requested by the Port (and authorized by the Board on September 10) indicate that “[the Port’s] inspectors have determined that critical pieces of the 111-mile line are in no worse shape than they were last September, when the railroad’s owner halted traffic because of safety concerns” See Exhibit 3, Associated Press: “Abandoned Ore Rail Line Getting Pricier” (September 23, 2008 (emphasis added); The Register-Guard “Rail line in good shape, but may cost port a lot more to buy” (September 23, 2008); KTVZ.com: “Abandoned Ore. rail line getting pricier (September 23, 2008). Thus, the current condition of the line – as confirmed by the Port’s own inspectors – does not support the Port’s claim that CORP violated its “common carrier obligation.”

The Port’s assertion that “[t]he need for track and tie repairs was described in an FRA track inspection report from November 2007” (Port’s Reply at 72) is a serious misrepresentation. The FRA report stated that certain tie repairs would be needed to restore track speed to 25 mph See Port’s Reply, Exhibit 30 at CORP002376 In other words, the tie replacement work that the Port cites as evidence of CORP’s “neglect” is work required to upgrade the line to FRA Class 2 standards The “common carrier obligation” does not require a rail carrier to maintain its lines to

⁸ The only exception was customer track at Willamette Industries, where the speed restriction was 5 MPH.

a track speed higher than is necessary to meet the reasonable requirements of shippers. As discussed above, there was no need (or economic justification) for CORP to upgrade the entire Coos Bay Subdivision to FRA Class 2 standards to transport fewer than 20 cars (almost all forest products) per day. To suggest that a short-line carrier on a lightly-traveled, money-losing branch line is “neglectful” if it does not maintain its entire line to FRA Class 2 levels is ludicrous.

Nor was CORP negligent in maintaining bridges on the Coos Bay Subdivision. To the contrary, CORP is one of the few shortlines that has followed a robust bridge inspection and maintenance program. As the Port’s own evidence shows, most Class II and Class III railroads do not inspect their bridges annually, nor do they maintain documentation related to bridge safety. *See* Port’s Reply, Exhibit 7, U.S. Government Accountability Office, Railroad Bridges and Tunnels: Federal Role in Providing Safety Oversight and Freight Infrastructure Investment Could Be Better Targeted (August 2007) (“*GAO Bridge/Tunnel Report*”) at 12-13 (“18 of the 43 Class II and III railroads reviewed by FRA since January 2004 could not produce some critical documentation related to the safety of their bridges, including past bridge inspection reports, design documents, or complete bridge inventories. Furthermore, only 16 of 43 Class II or III railroads . . . inspect their bridges once a year.” (emphasis added)). CORP is one of the relatively small percentage of short line railroads that do perform annual inspections. Each year, OSMOSE Inc., an expert bridge engineering and repair firm, conducts an inspection of all of the bridges on CORP’s lines. *See* CORP Abandonment Rebuttal at 37. Based upon that inspection, OSMOSE identifies both short-term repair requirements and longer term conditions with respect to particular bridges that warrant monitoring. *See id*

CORP acted on OSMOSE’s annual recommendations and made repairs to the bridges on the Coos Bay Subdivision even after the embargo of the line. Bridge improvements are an

expensive capital investment for all rail carriers, and ordinarily have a “lower return on investment than other infrastructure improvements.” Port Reply, Exhibit 7, *GAO Bridge/Tunnel Report* at 19. Even Class I railroads typically “invest in other enhancements before rehabilitating or replacing bridges” *Id.* Bridge and tunnel improvements are particularly expensive for short-line railroads: as the GAO observed, “Class II and, to a greater extent, Class III railroads face challenges in funding bridge and tunnel rehabilitation or replacement efforts because they may have limited funds, lack in-house bridge and tunnel expertise, and own bridges and tunnels purchased from Class I railroads on lines that those railroads had disinvested in” *Id.* at 20. Nevertheless, CORP has continued to fund substantial bridge rehabilitation efforts. Based upon OSMOSE’s annual recommendations, CORP authorizes OSMOSE to perform needed repairs to bridges on an annual basis. See CORP Abandonment Rebuttal at 37, V.S. Lundberg, Attachment 6. CORP undertook substantial bridge work on the Coos Bay Subdivision in every year between 2001 and 2007 – CORP even authorized repairs to the bridge at Milepost 743.73 near Reedsport, OR in October 2007, a month after the embargo was initiated. See *id.* The effectiveness of CORP’s regular bridge maintenance program is demonstrated by the fact that none of the OSMOSE reports for the years 2001-2007 identifies any “Priority 1” condition on a bridge located on the Coos Bay Subdivision. CORP’s extensive bridge maintenance program was anything but neglectful.

In short, the Port’s claim that CORP violated its common carrier obligation before September 21, 2007 (a time when it was providing service) is nonsense, as is the claim that the condition of CORP’s bridges and track somehow reflects a “milk the asset” strategy on CORP’s part. The only remaining question is whether CORP violated its common carrier obligation by seeking the assistance of interested stakeholders to fund \$2.9 million in tunnel repairs on a line

that was experiencing large (and increasing) operating losses, rather than immediately paying for those repairs itself. The answer to that question is unequivocally “no.” The Board has made it clear that “a carrier cannot legitimately be required to expend money to rehabilitate a line where it will lose money on the operation.” *Meyer v N Coast R R Auth* . STB Fin. Docket No. 34337 (served July 27, 2005); *see also Purcell v United States*, 315 U.S. 381, 385 (1942); *Brooks-Scanlon Co v. R R Comm’n of La.*, 251 U.S. 396, 399 (1920) (Holmes, J.) (“a carrier cannot be compelled to carry on even a branch of business at a loss”) The common carrier obligation did not require CORP to make a multi-million dollar capital investment to lift the embargo on a line that even the Port acknowledges (Port’s Reply at 6) is likely to generate ongoing losses for the foreseeable future. Indeed, the Port’s assertion that CORP’s failure immediately to repair the tunnels is even more absurd in light of the Port’s acknowledgement that it “would not be financially prudent and would likely not be sustainable for the Port” to incur debt for the same purpose. *Id* Nor did CORP’s attempt to forge a partnership among stakeholders to secure the future viability of the line, rather than immediately commencing the abandonment process, violate the common carrier obligation To the contrary, the Board has recognized that a carrier may take a reasonable period of time to seek assistance to restore service before seeking abandonment. *See Groome & Assocs v Greenville County Econ Dev Corp* . STB Docket No. 42087, slip op. at 15 (July 27, 2005) (embargo was reasonable during two-year period in which the carrier attempted to obtain funding to restore service on the line).

Finally, the Port’s new suggestion that CORP somehow violated its common carrier obligation by not designating the Coos Bay Line “on its System Diagram Map (‘SDM’) as a Category 1 rail line” as early as 2004 should be rejected. Port Reply at 16. In the first place, this brand new argument (which could have been – but was not – raised in the Port’s Reply in the

Show Cause Proceeding, in its Feeder Line Application, or in its Comments in the abandonment case) is improper rebuttal that should not be considered. Moreover, this bizarre contention mischaracterizes the Board's SDM rules. No line should be placed in Category 1 unless the carrier "anticipates [that the line] will be the subject of an abandonment or discontinuance application" within three years. 49 C.F.R. § 1152.10(b)(1). Here, the record is clear that CORP neither intended nor anticipated an abandonment of the Coos Bay Subdivision until April 2008, when it became apparent that CORP's proposals for restoring rail service via a public-private partnership would not be successful. *See Docket No. 35130*, CORP Response to Show Cause Order (filed May 12, 2008) at 16. Indeed, this argument is reminiscent of the Port's similarly flawed claim that CORP violated its common carrier obligation by not seeking abandonment authority "while the Line was still operational." Port Comments in Abandonment Proceeding at 46. To hold that a carrier violates its common carrier obligation by continuing to provide service rather than seeking abandonment authority as soon as a line becomes unprofitable would turn the statute on its head, and would create a strong incentive for carriers to seek abandonment at the first sign of trouble.⁹

In short, the Port's blatant attempt to obtain a discounted NLV by forcing CORP to fund a wholesale upgrade of the track and bridges on the line is contrary to law and completely unjustified by the factual record.

⁹ For the same reasons, the Board should reject the Port's request that it determine the NLV of track assets on the line based upon steel prices prevailing on May 5, 2004 or September 21, 2007 (or upon any averaging of prices back to either of those dates). *See* Port's Reply at 7, 15-20. It is well-established that "Net Liquidation Value" is the value of the track assets at the time of the taking. Moreover, the decisions cited by the Port demonstrate that the Board has, on occasion, utilized average steel prices over a period of time (often the time during which a case was pending) for the purpose of smoothing out the effects of short-term price volatility. *See, e.g., Keokuk Junction – Feeder Line – TP&W*, STB Dkt. No. 34335, slip op at 14-15 (Oct. 28, 2004). There is no precedent whatsoever for the Port's contention that the Board should utilize steel price averaging as a punitive device in this case, nor is there any factual basis for doing so.

III. THE PORT'S REPLY REGARDING THE NLV OF THE LINE CONTAINS NUMEROUS MISREPRESENTATIONS, HIGHLY MISLEADING STATEMENTS AND OUTRIGHT FALSEHOODS.

The Port's Feeder Line Application – or at the very latest, its August 28, 2008 Comments in the proceeding regarding CORP's abandonment application – should have included any evidence and argument that the Port wished to present in response to CORP's evidence of the NLV of the Abandonment Segment. However, the Port made a tactical decision to withhold that evidence from its previous submissions, choosing instead to submit it for the first time as “rebuttal” in this feeder line proceeding. As discussed above, this sandbag tactic was clearly designed to deny CORP the opportunity to respond to the Port's evidence.

More importantly, believing that its strategy would effectively shield its NLV evidence from challenge, the Port exhibited little regard for the truth in crafting that evidence. Indeed, the Port's Reply is replete with contradictions of the Port's prior testimony, highly misleading statements, misrepresentations of cited authority and outright falsehoods. The Port even had the audacity to submit a supposed “bid” to remove the Siuslaw and Umpqua River bridges prepared by the President of West Coast Contractors, Inc., Mr. David Kronsteiner – who also happens to be President of the Port's Board of Commissioners – a blatant conflict of interest.

This part of CORP's Supplemental Response discusses the most egregious misrepresentations in the Port's Reply on the NLV issue. While the Port's Reply contains numerous other misstatements and mischaracterizations, the items discussed below provide sufficient basis for the Board to find that the Port's NLV evidence lacks credibility, and should be rejected in its entirety.

A. Counsel's Inappropriate And Incorrect "Testimony" Regarding The Potential For Trail Use.

As CORP's Abandonment Application showed, it is doubtful that CORP would be required to remove bridges along the Coos Bay Subdivision because of its potential as a unique recreational trail. *See, e.g., Docket AB-515 (Sub-No 2)*, Abandonment Application, V.S. Bader at 3, n.1. CORP responded to the Port's claim that the cost of removing the Siuslaw and Umpqua River bridges should be deducted from the NLV of the line by demonstrating, *inter alia*, that the Trust for Public Lands (the "Trust") had already indicated in writing that it was "very interested" in acquiring the right-of-way for trail use. *See* CORP Response, V.S. Pettigrew, Attachment 10 (letter dated August 26, 2008 from Trust to Todd N. Cecil) ("Trust Letter"). This genuine expression of interest fatally undermined the Port's contention that CORP would "definitely" be required to remove the two bridges.

In an attempt to revive its claim, the Port Reply sought to minimize the impact of the Trust Letter, characterizing it as a mere "suggestion that there may be possible interest" in using the bridges as part of a trail. Port's Reply at 21. Moreover, the Port stated that

Counsel for the Port spoke with Owen Wozniak of the Trust and was informed that it was CORP that had contacted the Trust and requested a letter from the Trust. Mr. Wozniak was apparently told that the letter had to be received in order to preserve the possibility a trail. There was no discussion of any terms of a trail agreement. *Id.* at 21-22 (emphasis added).

These representations are problematic for two reasons. First, they constitute unsworn "testimony" by counsel, and should be disregarded for that reason alone. More importantly, the Board should disregard counsel's assertions because they are demonstrably incorrect.

As the Supplemental Verified Statement of witness Cecil (who was personally involved in CORP's discussions with the Trust) makes clear, the Trust Letter was not solely the product of a request by CORP for a general expression of interest in the Coos Bay Subdivision right-of-

way. To the contrary, the Trust Letter followed substantive discussions between CORP and the Trust during August 2008 in response to the Trust's strong interest in acquiring the Coos Bay Subdivision right-of-way. The Trust's representatives believed (with good reason) that the right-of-way offered an attractive trail opportunity, given its location connecting Eugene with the National Dunes Seashore area and the scenic lake region through which the CORP line runs. Exhibit 1 at 2 (Supp. V.S Cecil) Contrary to the "testimony" of Port counsel, CORP never told the Trust that "the letter had to be received in order to preserve the possibility of the corridor as a trail," nor did CORP otherwise indicate that such a letter was a prerequisite to CORP's willingness to sell the right-of-way for trail use. Exhibit 1 at 4 (Supp. V.S Cecil).

Furthermore, Port counsel's "testimony" that "[t]here was no discussion of any terms of a trail agreement" between the Trust and CORP is flatly refuted by documentary evidence following preliminary discussions with CORP, on August 13, 2008 the Trust's Regional Counsel, Mr. Ives, tendered to CORP a draft form of Confidential Disclosure Agreement to govern the exchange of information and the negotiation of a purchase agreement See Exhibit 1 (Supp. V.S. Cecil) at Attachment 2. The parties executed the Confidential Disclosure Agreement on August 14, 2008. See Exhibit 1 (Supp. V S. Cecil) at Attachments 3 and 4. CORP then provided the Trust with information regarding the appraised value of the right-of-way. See Exhibit 1 (Supp. V.S. Cecil) at Attachment 5.

Following the Trust's review of the information provided by CORP, the Trust's counsel tendered to CORP a draft Bargain Sale Option Agreement on August 22, 2008. See Exhibit 1 (Supp. V.S. Cecil) at Attachment 6. The draft agreement tendered by the Trust contemplated that it would acquire "an exclusive and irrevocable option to purchase the Subject Property" for a period of time, and provided for a firm purchase price for the exercise of that option. See

Exhibit 1 (Supp. V S Cecil) at Attachment 6 at 1-2 Mr Cecil met with the Trust's representatives (including Mr. Wozniak and Geoff Roach, the Trust's Regional Director) in Portland, OR on August 25, 2008. During the course of that meeting, CORP suggested a specific purchase price for the right-of-way. While Mr Roach indicated that the Trust would be required to conduct its own appraisal before it could agree to a specific price, both he and Mr Wozniak indicated that CORP's suggested price might very well be reasonable. The parties also discussed other business terms including the form of deed and the stream of income that the Trust might earn from ancillary rights attached to the right-of-way.

However, Mr. Roach expressed concern that entering into a purchase agreement with CORP could expose the Trust to adverse political consequences with the State, county governments and other local governmental entities upon which the Trust must rely to fund other projects in Oregon. Indeed, Mr Roach stated that the Trust "didn't want a call from the Governor asking us what the [****] we were doing." Based upon those concerns, the Trust concluded that it could not execute a purchase agreement until "the State and the Port of Coos Bay were out of the picture." Exhibit 1 (Supp. V.S. Cecil) at 3-4. While the Trust declined to enter into a definitive purchase agreement at that time, it agreed to provide the Trust Letter so that the Board would be aware of the Trust's bona fide interest in the right-of-way.

As the sworn testimony of witness Cecil and the documents attached to his Verified Statement show, the Port's assertions that CORP pressed the Trust to provide a general expression of interest in the right-of-way, and that "[t]here was no discussion of any terms of a trail agreement" between the Trust and CORP, are simply not true. Indeed, it was the Trust – not CORP – that proposed a Confidential Disclosure Agreement to facilitate the exchange of information and the negotiation of a sale agreement. It was the Trust – not CORP – that

prepared and tendered an initial draft sale agreement. At the August 25, 2008 meeting in Portland, the parties discussed substantive terms of a sale agreement, including a possible purchase price. As witness Cecil explains, “[h]ad it not been for the Trust’s concerns about the political repercussions of completing a sale transaction with CORP while the current proceedings are pending, I am confident that the parties could have reached agreement on the terms of a definitive sale agreement.” Exhibit 1 (Supp. V.S. Cecil) at 4-5.

Witness Cecil’s correction of the misstatements contained in the Port’s Reply make clear the very real possibility that CORP may sell the Coos Bay Subdivision right-of-way for development as a recreational trail. Thus, the record does not support the Port’s claim that CORP would, in fact, be required to remove the Siuslaw and Umpqua River bridges. To the contrary, the Port has failed to carry its burden of proving that those bridges would have to be removed in connection with the salvage of the line. Accordingly, the Board should reject the Port’s Reply claim that the NLV of the line should be reduced by approximately \$6 million to account for the cost of removing the two bridges.

B. Mr. Kronsteiner’s “Bid” To Dismantle The Bridges.

CORP’s estimate of the potential cost of removing the Siuslaw and Umpqua River bridges is based upon actual bids to perform that work submitted by two disinterested third party companies, I. B. Foster, a national rail line salvage firm, and Staton Companies, a company with extensive experience in bridge demolition located in Eugene, OR. Foster’s purchase offer included a \$2,000,000 net cost for removing the two bridges. Staton’s bid for removing the bridge spans over the waterways was \$2,065,790. See CORP Response, V.S. Pettigrew at 7, 19-20, Attachments 3, 8. The reasonableness of the bids submitted by Foster and Staton was buttressed by the testimony of witness Maloney of Edward Kraemer & Sons, a firm with experience in the demolition of railroad bridges. Witness Maloney corrected various erroneous

assumptions and calculations in the Port's opening evidence on bridge removal costs, and he developed a revised estimate of the cost of removing both bridges – based on the general methodology followed by the Port's witness, with appropriate adjustments – of approximately \$2.85 million. *See* CORP Response, V.S. Maloney at 2, 8-17.

In a desperate attempt to rebut these three independent (but mutually reinforcing) estimates submitted by CORP (two of which are actual bids that provide prices for which experienced contractors stand ready to perform the bridge removal work), the Port's Reply offers a "bid" prepared by West Construction Contractors, Inc ("WCC") of Coos Bay, OR. *See* Port's Reply, V.S. Davis, Attachment M. This new evidence – raised for the first time on rebuttal – should be rejected for several reasons.

First, the WCC estimate is not a bona fide "bid." It consists of a memorandum addressed not to CORP (the owner of the bridges and the party that would be removing them), but to the Port. If the Feeder Line Application is granted, the Port plans to – indeed, it would be required to – operate the Coos Bay Subdivision, not salvage it. Therefore, the Port has neither any genuine interest in, or authority to, remove the two bridges. For this reason alone, the WCC estimate is not a legitimate "bid" and cannot be equated with the actual bids submitted by CORP from companies that are willing and able to undertake the work for the quoted prices, should CORP's abandonment application be approved.

Second, even if the WCC estimate were somehow considered a "bid," it must be disregarded because it embodies a blatant conflict of interest. According to witness Davis "the Port solicited and received a second, separate bridge removal bid from West Coast Contractors, based in Coos Bay, OR." *See* Reply V.S. Davis at 13 (emphasis added). Witness Davis states that WCC's quoted price for removing both the Siuslaw and Umpqua River bridges was

\$8,119,980 *Id.* What he fails to disclose is that the WCC “bid” was submitted WCC’s President, David Kronsteiner, who also serves as President of the Port’s Board of Commissioners. *See id.* Attachment M (bid submitted by David Kronsteiner in his capacity as president of WCC). As Mr. Kronsteiner testified (in his capacity as Port President), he and his brother operate WCC as a “family business ” *See* August 21 Hearing Tr at 159 (Kronsteiner). The WCC “bid” was buried at the back of a large group of attachments to witness Davis’ testimony, which was itself submitted as an Exhibit to the Port’s Reply

Even assuming that the WCC estimate were a bona fide bid, and that the Port actually would have any desire to remove the bridges, the Port’s solicitation of a bid for that work by a contractor owned and operated by its President would present a clear conflict of interest. The Oregon statute governing conflicts of interest involving public officials provides, in relevant part, that

(2) An elected public official, other than a member of the Legislative Assembly, or *an appointed public official serving on a board or commission, shall:*

(a) When met with a potential conflict of interest, *announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or*

(b) When met with an actual conflict of interest, *announce publicly the nature of the actual conflict*

ORS 244.120(2)(b) (emphasis added). As an appointed member of the Port’s Board of Commissioners, Mr Kronsteiner is clearly subject to the statute’s conflict of interest provisions. Thus, if the WCC “bid” were a legitimate offer to perform services for the Port, Mr. Kronsteiner, in his capacity as Port President, would be required by law to disclose publicly the conflict presented by his proposal to grant a multi-million dollar demolition job to his own firm There is no indication in the Port’s Reply, or anywhere else in the record, that Mr Kronsteiner did, in

fact, make such public disclosure. The only conclusion that can be drawn from these facts is that either (1) Mr. Kronsteiner violated Oregon law; or (2) that the WCC proposal was never intended to be a “real” bid to the Port.

Third, the WCC bid should be disregarded because it lacks credibility. In the circumstances presented here, Mr. Kronsteiner had multiple incentives to inflate the price of removing the Siuslaw and Umpqua River bridges. As President of the Port, a higher “bid” price (if accepted by the Board) would have the effect of reducing the NLV of the line, to the Port’s benefit. Moreover, Mr. Kronsteiner’s “family business” would benefit handsomely if the Port were to retain the services of WCC to remove the bridges at an excessive price. In either case, it is clear that WCC is not a “disinterested third party,” and its inflated bridge removal estimate is not trustworthy.

The Port’s attempt to foist WCC’s bogus “bid” on the Board is especially audacious given the Port’s criticism of the bids submitted by Foster and Unitrac on the grounds that those two companies have done business with CORP in the past, and therefore would have an incentive to inflate their salvage bids. *See* Port’s Reply at 32. The incentives of those two disinterested third party vendors cannot legitimately be compared to those of Mr. Kronsteiner, an interested party in this case. Moreover, while both Foster and Unitrac have in the past done business with CORP and other RailAmerica railroads, the limited amount of such business does not create an incentive for either company to inflate its bid for (and thereby potentially lose money on) the salvage of the Coos Bay Subdivision. Indeed, as the Port’s evidence shows, in the case of both Foster and Unitrac, the total volume of business conducted with all of the 41 RailAmerica railroads combined over the past five years is less than the amount of the bid that it submitted in this case. *See* Port Reply, Exhibit 16. Further evidence that the bids submitted by

Foster and Unitrac were not artificially reduced for CORP's benefit is that Foster's bid for the removal of the Siuslaw and Umpqua River bridges was virtually the same as that submitted for the removal of the same bridge spans by Staton, a company that has not done business with CORP in the past, while Unitrac declined even to quote a price for that work.

The credibility of WCC's estimate is further undercut by the enormous disparity between the amount of that estimate (\$8.1 million) and the amounts of the bids submitted by Foster (\$2,000,000) and by Staton (\$2,065,790), and the estimate developed by witness Maloney on the basis of the Port's initial evidence (\$2.85 million) WCC's "bid" – prepared by a firm with no demonstrated experience in bridge removal whose President also serves as president of the Port – is clearly an outlier. *See* RVS Davis Attachment M at 2 (description of experience and services provided by WCC does not include bridge removal). The Port offers no plausible explanation as to why WCC's cost estimate is so much higher than the estimates presented by three separate disinterested parties who possess unquestionable expertise in the business of bridge demolition and removal

For these reasons, the WCC "bid" is entitled to no weight whatsoever

The only other evidence that the Port proffers in support of its assertion that the NLV of the line should be reduced by \$6 million to account for the cost of removing the Siuslaw and Umpqua River bridges is an estimate cobbled together by witness Davis on Reply, using the Staton bid originally submitted by CORP, rough cost range estimates for certain supplemental work compiled by unidentified third parties and forwarded by Staton; and information that witness Davis claims to have obtained from a variety of other sources (including new permit cost estimates submitted for the first time on Reply). *See* Port's Reply, V.S. Davis, Attachments J –

L¹⁰ This amalgam of price and cost estimates culled from unrelated sources is not a coherent or reliable “bid” to remove the two bridges. It should be noted that the costs set forth by Staton for the work contained in the original Staton bid to CORP were identical in amount to the prices quoted by Staton to the Port. *Compare* CORP Response, V.S. Pettigrew, Attachment 8 with Port’s Reply, V S. Davis, Attachment L. Moreover, while Staton offered witness Davis rough estimates of the cost of ancillary items such as “cofferdams” and “pile removal,” Staton made clear that “Staton does not perform this type of work, and these numbers are not bid items. . . . We suggest that you perform you own price requests from experienced contractors in their respective fields in this work.” *Id.*, Attachment L. Thus, the additional costs for which witness Davis relied upon information forwarded by Staton were not part of Staton’s original bid presented to CORP, nor did Staton endorse the Port’s position that such additional work would need to be undertaken in connection with the removal of the portion of the Siuslaw and Umpqua River bridges over navigable waters. Staton’s disclaimer severely undermines any evidentiary value that such supplemental information might have had.

C. The Port Blatantly Mischaracterizes The Law And The Evidence Regarding Bridge Removal.

The Port asserts that “the swing bridges over the Umpqua and Siuslaw Rivers must be entirely removed due to U.S. Coast Guard regulations.” Port’s Reply at 20 (emphasis added). This unequivocal statement misrepresents both the law and the record evidence. As the Port knows, whether and to what extent either of the bridges might need to be removed in the event of abandonment is very much an open question.

¹⁰ Witness Davis followed the same *modus operandi* – cobbling together data and information from multiple disparate and unrelated sources that were developed using different, inconsistent methodologies – throughout his Reply NLV testimony. *See generally*, RVS Davis and attachments. The result is that the Port’s final NLV estimate is not only erroneous, it is internally inconsistent and incoherent.

For example, if the right-of-way were converted to trail use, the Coast Guard would not require that any portion of the bridges be removed. *See, e g .* 33 C.F.R. § 116.01(a); CORP Response, V.S. Pettigrew, Attachment 9 at 4 (statement from Coast Guard Chief of Alterations and Drawbridge Operations); STB Environmental Assessment at 8-10 (noting possible use of right-of-way as trail, and that abandoned railroad bridges may be “an important component” of such trails) As discussed above, there is a very real possibility in this case that, if CORP’s abandonment application is approved, the right-of-way would be sold for use as a recreational trail For that reason alone, the Port’s unqualified assertion that the Siuslaw and Umpqua River bridges “must be entirely removed” is wrong.

In any event, the Port’s claim that “both bridges must be removed in their entirety” (Port’s Reply at 20) is not supported by the law. Remarkably, the Port attempts to support its claim that CORP would be required to remove the entire structures of both bridges, including portions that are well outside the navigable waterway, on a statement of the Coast Guard concerning the option of removing less than the full span of the bridge within the waterway. *See* Reply at 20, 25-26. As witness Pettigrew previously testified, the Coast Guard advised CORP that, if a bridge that obstructs water navigation is no longer used for land transportation, the bridge owner may: (i) remove the portion of the bridge over the waterway; or (ii) remove the span(s) over the navigation channel and request permission from the Army Corp of Engineers to leave remaining portions in the waterway. *See* CORP Response V.S. Pettigrew Attachment 9 at 3. Specifically, the Coast Guard’s Chief of Bridge Alteration indicated that:

Should the bridge owner desire to retain portions of the bridge in the waterway after removal of the main navigation span, they *should consult with the U.S. Army Corps of Engineers*. Failure to obtain Corps' approval to leave parts of the structure in the waterway after it has lost its character as a bridge will subject the bridge owner to remove the bridge in its entirety down to or below the natural bottom of the waterway .

Id (emphasis added) The quoted language provides no support whatsoever for the proposition that the Coast Guard would, under any circumstance, require the removal of those portions of a bridge that are not within the boundaries of the navigable waterway. To the contrary, this language demonstrates that it is not at all clear that CORP would even be required to remove all of the bridge that lies within the waterway. Moreover, elsewhere in the same document, the Coast Guard confirmed that its regulations require removal of the portion of bridges "from the waterway, bank to bank." *Id*. Ignoring the clear language of the very document upon which it purports to rely, the Port characterizes the Coast Guard statement as showing that "Army Corps of Engineers approval would be required [to] allow[] any portion of these two bridges to remain " Reply at 25 The Port's distorted reading of Coast Guard policy is neither reasonable nor logical and should be rejected

The Port's Reply also argues – for the first time – that some agency other than the Coast Guard might conceivably seek to require CORP to remove portions of the Siuslaw and Umpqua River bridges that do not span the navigable waterway. *See* Port Reply, V S. Gaul Specifically, the Port now claims that the Army Corps of Engineers or some other agency might attempt to compel removal of non-waterway portions of the bridges *See* Reply at 23-26, R V.S. Gaul. This argument – which contradicts the Port's prior position that bridge removal would be required solely "due to legal requirements of the United States Coast Guard" (*see* Feeder Line Application at 17; V S Davis at 102, 104-05) – should be disregarded. The Port was obliged to submit its entire case-in-chief in its opening evidence. *See, e g , Duke Energy*, Dkt No 42069

(Nov. 6, 2003) The Port never suggested in its Feeder Line Application or its Comments in the abandonment proceeding that the Corps of Engineers, Oregon DOT or any other agency or regulation might require removal of any portion of the Siuslaw or Umpqua River bridges. The Port's failures to raise this claim at the appropriate time precludes the Port from raising it for the first time on rebuttal. In any event, such speculation provides no evidentiary basis for a finding that CORP would "definitely" be required to remove any portion of the Siuslaw or Umpqua River bridges

D. The Port Attempts To Salvage Mr. DeVoe's "Base Homesite Theory" By Misciting The Appraisal Literature.

In the CORP Response, witness Rex demonstrated that the "base homesite theory" upon which Port witness DeVoe bases his entire appraisal of residential right-of-way land is an unsupported concept of witness DeVoe's own making that "defies both logic and market reality" CORP Response, V.S. Rex at 13. Indeed, Mr. Rex testified that "[i]n my 34 years of appraising land, teaching appraisal courses and researching the appraisal literature, I have never heard of the 'base homesite theory'." *Id*

Neither the Port's Reply nor witness DeVoe's reply testimony cites a single authority that mentions, much less legitimizes, his "base homesite theory." Instead, the Port now suggests that the "base homesite theory" is actually an "archaic" term intended by Mr. DeVoe to refer to the valuation of "surplus land."¹¹ Port Reply at 40; Reply V.S. DeVoe at 28 Mr DeVoe elaborates that "[i]n my explanations of base homesite theory the reference to 'excess' land could be more accurately referred to as 'surplus land.'" Rebuttal V S DeVoe at 28. Based upon this renaming

¹¹ If, in fact, "base homesite theory" were merely an "archaic" term, witness DeVoe should have been able to cite to some older appraisal literature in which it was mentioned.

of witness DeVoe's theory, the Port cites certain passages from *The Appraisal of Real Estate*¹² that refer to the identification and valuation of "excess land" and "surplus land." See Port's Reply at 37-39. However, the Port omits key portions of the text's discussion on the subject, and mischaracterizes the cited portions. A more complete reading of *The Appraisal of Real Estate* reveals that it provides no support whatsoever for witness DeVoe's "base homesite theory."

The references from *The Appraisal of Real Estate* cited by the Port in support of witness DeVoe's theory appear in the chapter titled "*Land or Site Analysis*." See Exhibit 4. The chapter begins by drawing a clear distinction between "raw land" and an improved "site." *The Appraisal of Real Estate* at 189. "Raw land" is defined as "[l]and on which no improvements have been made, land in its natural state before grading, construction, subdivision, or the installation of utilities." *Id.* By contrast, a "site" is "[l]and that is improved so that it is ready to be used for a specific purpose." *Id.* (emphasis added). Based upon these definitions, the Coos Bay Subdivision right-of-way would clearly be classified as "raw land" since it does not contain any improvements (other than the track assets, which would be removed prior to sale). The text goes on to state that, in the chapter, "the term site is used except when raw land is specified." *Id.* (emphasis in original)

The discussion of "excess land" and "surplus land" relied upon by the Port appear on page 198 of the chapter. In both cases, the cited excerpts refer to the valuation of "excess" or "surplus" land that is part of an improved "site" – not to the valuation of "raw land." Indeed, the very text quoted by the Port defines "excess land, in regard to an improved site" or a "vacant site" (such as a vacant lot in a residential subdivision that may be graded or have utility access, but which does not contain a house). Port's Reply at 38 (emphasis added). See also Reply V.S.

¹² The Appraisal Institute, *The Appraisal of Real Estate* 198 (12th ed. 2001).

DeVoc at 28-29. The passage quoted by the Port likewise defines “surplus land” as “[land] not needed to support the existing improvement and typically cannot be separated from the property and sold off.” *Id.* (emphasis added). Thus, the discussion of “excess land” and “surplus land” upon which the Port and witness DeVoc rely applies to “sites” containing existing improvements, not to “raw land” like the Coos Bay Subdivision right-of-way. Read in their proper context, the excerpts from *The Appraisal of Real Estate* cited by the Port and witness DeVoc stand for the unremarkable proposition that the majority of the value of an improved parcel may be attributed to the improvement (such as a house or other building) itself. The cited references provide no support whatsoever for witness DeVoc’s undervaluation of “raw land” along the Coos Bay Subdivision right-of-way that is suitable for residential use or development.

The Port’s attempt to buttress witness DeVoc’s “base homesite theory” with citations to *The Appraisal of Real Estate* also refers to an example offered in the text as to how the concept of “surplus land” might be applied in practice. Port’s Reply at 38-39. The Port cites the following passage from the example:

“in this situation, the surplus land would probably still contribute positively to the value of the subject property (because the existing improvements could still be expanded onto the surplus land, but it would also likely be worth much less than the \$2.00 per square foot price [the price for the example] commanded by vacant land elsewhere in the industrial park.”

Port Rebuttal at 38-39 (quoting *The Appraisal of Real Estate* at 199) (emphasis in original)

The Port’s citation of this excerpt is problematic, for several reasons. On its face, the example refers to “surplus” land that is part of an improved parcel in an industrial park. This example does not support witness DeVoc’s assignment of minimal value to the entirety of unimproved residential parcels along the Coos Bay Subdivision right-of-way – indeed, the quoted language explicitly contradicts witness DeVoc’s analysis by suggesting that “vacant

land” would have a higher value. More importantly, the Port presents a highly misleading portrayal of the example by failing to include several key facts. The full text of the example reads as follows

Now consider an industrial park where land-to-building ratios for warehouse properties range from 2.8-to-1 to 3.5-to-1 and land value is \$2.00 per square foot. The subject property is a 20,000-sq.-ft. warehouse on a 100,000-sq.-ft. site, which results in a land-to-building ratio of 5-to-1, well above the market area norm. If the additional land not needed to support the highest and best use of the existing property were in the back portion of the site, lacking access to the street, that land would probably be considered surplus land because it could not be separated from the site and does not have an independent highest and best use. In this situation, the surplus land would probably still contribute positively to the value of the subject property (because the existing improvements could still be expanded onto the surplus land), but it would also most likely be worth much less than the \$2.00 per square foot price commanded by vacant land elsewhere in the industrial park. If an adjacent property owner could expand onto the unused portion of the site of the subject property, that land could then be considered excess land because it could be separated from the existing property and used by the other property owner. In this case, the value of the excess land could be comparable to that of vacant land elsewhere in the industrial park, or it may even command a premium if the owner of the adjacent property needs the land to complete an assemblage.

The Appraisal of Real Estate at 199 (emphasis added). Viewed in its full context, the example upon which the Port relies provides no support for witness DeVoc’s appraisal of residential parcels. As even witness DeVoc recognized, many, if not most, of the residential parcels along the right-of-way do have access to a road. *See, e.g.*, DeVoc Appraisal at 145-46, 177. Moreover, the residential parcels appraised by witnesses DeVoc and Rex are not “excess portions” of an “improved site” that “cannot be separated from the property and sold off.” Thus, based upon the definition of “surplus land” and the example set forth above, those residential parcels are not even properly classified as “surplus land” within the meaning set forth in *The Appraisal of Real Estate*.

Even if the “base homesite theory” had any theoretical validity – and it does not – witness DeVoc’s appraisal of residential property would still be fatally flawed because of the methodology he used in applying the theory. As witness Rex showed, witness DeVoe valued every acre of residential land along the entire 111-mile right-of-way as if it were a “surplus” portion of an improved residential parcel located in Swisshome, the town with the lowest land values anywhere along the line. Specifically, witness DeVoe violated the very principles from the *The Appraisal of Real Estate* upon which he purports to rely by failing to take account of the higher value that would be attributable to the “improved” portion of a residential “site.” More importantly, by assigning the same per-acre value that he developed from his comparable sales in Swisshome to residential parcels in other communities, witness DeVoe took no account whatsoever of the very substantial differences in per acre land values in the communities along the right-of-way. *See* CORP Response, V.S. Rex at 8, 21.

E. Witness DeVoc’s Assertion That Purchasers Of Land From CORP Were Unaware Of The SPT Easements Is Patently False.

In its Response, CORP demonstrated that witness DeVoc’s 50% reduction in the value of the right-of-way land on account of certain ancillary rights and easements retained by Southern Pacific Transportation Company (“SPT”) in the original conveyance to CORP was inappropriate. Specifically, CORP witness Cecil produced evidence of numerous sales by CORP of right-of-way land that was subject to the SPT rights at prices at or above full ATF value. *See* CORP Response, V.S. Cecil at 4-9. Indeed, witness Cecil showed that the single land sale cited by witness DeVoc in support of his 50% discount (a sale of land to Swanson Brothers at Noti, OR) involved a purchase price that was 150% of the appraised value, and therefore clearly did not support witness DeVoc’s discount. *Id.* at 5.

In an attempt to blunt the impact of this powerful market-based evidence, witness DeVoe asserts that “it appears that Swanson lacked crucial knowledge of the reservations in its negotiations with CORP.” Port’s Reply, V.S. DeVoe at 9. The Port likewise suggests that, because witness Cecil indicated that the SPI reservations “were never discussed” during the course of negotiations, Swanson was not aware of them. Port Reply at 53. These assertions are demonstrably false.

Any suggestion that Swanson was unaware of the SPT rights when it purchased the property from CORP is disproven by the fact that the SPI reservations are explicitly described on the first page of the deed to Swanson. Mr. DeVoe was plainly aware of that fact – the Swanson deed was among witness DeVoe’s workpapers that were produced to CORP on August 12, 2008. *See* Exhibit 5. CORP’s deeds to other purchasers of right-of-way land likewise explicitly identified the rights retained by SPI. *See* Exhibit 6. The Port’s claim that “the affect [sic] [of the SPT reservations] on the value of the land was never analyzed” (Port Reply at 53) would have the Board believe that in none of the land sales cited by witness Cecil did the purchasers (or their lawyers or real estate agents) bother to read the deed prior to closing. Any such suggestion is ludicrous on its face.

* * * * *

Finally, the Port takes exception to what it describes as witness Rex’s “ridicule” of witness DeVoe’s analysis. Port’s Reply at 37. According to the Port, witness DeVoe’s “testimony was (and is) offered without any preconceived objective in mind: it is not results-oriented.” *Id.* It should be noted, however, that Mr. DeVoe’s objectivity has been the subject of controversy in prior litigation. In *In re Estate of William Busch (Deceased)*, 1 C M 2000-3, Docket No. 16441-97 (2000), the United States Tax Court reached the following conclusion

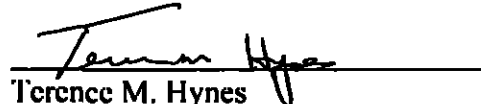
regarding an appraisal conducted by witness DeVoe “Based on our evaluation of the evidence, it appears that DeVoe's valuation appraisal was conservatively performed favoring decedent's estate. We reach that conclusion because he used a per acre value at the lower ranges of the true comparables and a discount rate at the highest end of the spectrum when considering the facts in our record.” See Exhibit 7, Slip Opinion at 35-36 The enormous disparity between the Gross Liquidation Value for the Feeder Line Segment posited by witness DeVoe (\$1.2 million) and that estimated by witness Rex (\$24.6 million), and witness DeVoe's incredible conclusion that fully 1,466 acres out of 1,741 acres of CORP's right-of-way land have no value whatsoever (see CORP Response at 19), similarly raise suspicion regarding the degree of objectivity with which witness DeVoe approached his assignment in this proceeding.

CONCLUSION

For the reasons set forth in this Supplemental Response, CORP respectfully requests that the Board (1) find that the Port is not a “financially responsible person” within the meaning of 49 U.S.C. § 10907(a); (2) reject the Port's request for an escrow fund for rehabilitation of the line; and (3) adopt CORP's estimate of the NLV of the line

Scott G. Williams
Senior Vice President and
General Counsel
RailAmerica, Inc.
5300 Broken Sound Boulevard N.W.
Boca Raton, Florida 33487
(561) 994-6015

Respectfully submitted,


Terence M. Hynes
Paul A. Hemmersbaugh
Matthew J. Warren
Noah Clements
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for Central Oregon & Pacific Railroad, Inc

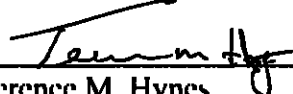
Dated: September 29, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Supplemental Response of Central Oregon & Pacific Railroad, Inc. to Reply of Oregon International Port of Coos Bay to be served by hand-delivery this 29th day of September 2008 on:

Sandra Brown
Froutman Sanders
401 Ninth Street, N W.
Washington, D.C. 20004-2134

and by first-class mail, postage prepaid, and/or overnight delivery, to all parties of record.


Terence M. Hynes

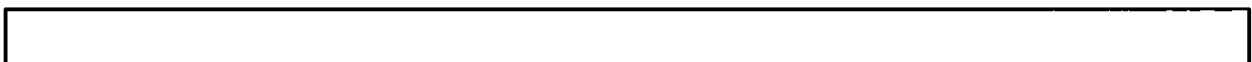


EXHIBIT 1

Oregon International Port of Coos Bay – Feeder Line)
Application – Coos Bay Line of the Central Oregon &) Finance Docket No. 35160
Pacific Railroad, Inc.)

interest in purchasing the right-of-way by the Trust, execution of a Confidential Disclosure Agreement to govern the exchange of information and negotiation of a sale agreement, the provision of information regarding the right-of-way by CORP to the Trust pursuant to the Confidential Disclosure Agreement, the presentation of a draft agreement by the Trust, and a meeting in Oregon on August 25, 2008 to negotiate the terms of an agreement. At that meeting, representatives of the Trust expressed – for the first time – their concern that entering into a definitive agreement with CORP while the current abandonment and feeder line proceedings were pending would have adverse political consequences for the Trust in Oregon. Based upon that concern, the parties postponed further negotiations until after the Board acts on CORP's abandonment application.

CORP and the Trust began discussing the possible acquisition of the Coos Bay Subdivision right-of-way in early August 2008. *See Attachment 1*, email message dated August 11, 2008 from Mr. Cecil to Peter Ives, Regional Counsel for the Trust. In those preliminary discussions, the Trust expressed the view that the right-of-way offered an attractive trail opportunity, given its location (connecting Eugene with the National Dunes Seashore area) and the scenic lake region through which the CORP line runs. On August 13, 2008, the Trust's Regional Counsel, Mr. Ives, tendered to CORP and its counsel a draft form of Confidential Disclosure Agreement to govern the exchange of information and the negotiation of a purchase agreement. *See Attachment 2*. Following certain revisions, the parties executed the Confidential Disclosure Agreement the next day, August 14, 2008. *See Attachments 3 and 4*. Pursuant to the Confidential Disclosure Agreement, CORP provided the Trust with information regarding the appraised value of the right-of-way. *See Attachment 5*

Thereafter, on August 22, 2008, Mr. Ives tendered to CORP a draft Bargain Sale Option Agreement ("Trust Sale Agreement") for the Coos Bay Subdivision right-of-way, based upon similar agreements entered into by the Trust in connection with its acquisition of other rail lines for trail use. *See* Attachment 6. The draft Trust Sale Agreement contemplated that the Trust would acquire "an exclusive and irrevocable option to purchase the Subject Property" within a specified period of time. *See* Attachment 6 at 1-2. In addition, the agreement would have established a firm purchase price for the right-of-way in the event that the Trust exercised the option. *Id.* at 2. The parties agreed to meet in Portland, OR on Monday, August 25, 2008 to discuss the Trust's draft agreement (as well as an alternate draft that I had prepared based upon prior right-of-way sales by RailAmerica).

I traveled from my offices in San Antonio, TX to Portland, OR to meet with representatives of the Trust on August 25, 2008. At that time, I met with Geoff Roach, the Trust's Regional Director, and with Owen Wozniak, a Field Representative in the Trust's Portland office. Mr. Roach reiterated the Trust's strong interest in acquiring the right-of-way for trail use in the event that the Coos Bay Subdivision is abandoned. During the course of the meeting, I suggested a specific purchase price for the right-of-way. While Mr. Roach indicated that the Trust would be required to conduct its own appraisal before it could agree to a specific price, both he and Mr. Wozniak indicated that my suggested price might very well be reasonable. We also briefly discussed other terms including the form of deed and the stream of income that the Trust might earn from ancillary rights attached to the right-of-way.

However, Mr. Roach advised me that the Trust could not move forward with a definitive purchase agreement unless the abandonment case was decided and "the State and the Port of Coos Bay were out of the picture," or those entities endorsed a purchase of the right-of-way by

the Trust. The Trust had concluded that entering into a purchase agreement with CORP could expose the Trust to adverse political consequences with the State, county governments and other local governmental entities upon which the Trust must rely to fund other projects in Oregon. Indeed, Mr. Roach stated that the Trust “didn’t want a call from the Governor asking us what the [****] we were doing ”

Based upon those statements, it became obvious that the parties would not be able to complete a definitive sale agreement at this time. However, I indicated to Mr. Wozniak that the Trust’s ongoing interest in acquiring the right-of-way following abandonment of the Coos Bay Subdivision would be relevant to the Board’s deliberations. Accordingly, Mr. Wozniak agreed to provide the letter that CORP submitted in connection with Mr. Pettigrew’s August 29, 2008 Verified Statement. Contrary to the “testimony” of Port counsel, I did not tell the Trust that “the letter had to be received in order to preserve the possibility of the corridor as a trail,” nor did I otherwise indicate that such a letter was a prerequisite to CORP’s willingness to sell the right-of-way to the Trust in the future.

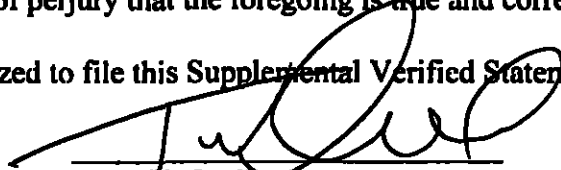
In short, the Port’s assertions that CORP pressed the Trust to provide a general expression of interest in the right-of-way, and that “[t]here was no discussion of any terms of a trail agreement” between the Trust and CORP, are utterly false. As my testimony shows, the Trust expressed a strong desire to acquire the right-of-way, and it pursued a potential transaction aggressively up until the August 25 meeting. It was the Trust – not CORP – that proposed the Confidential Disclosure Agreement to facilitate the exchange of information and the negotiation of a sale agreement. It was the Trust – not CORP – that prepared and tendered an initial draft sale agreement. While the parties did not reach the point of agreeing on a specific purchase price (given the Trust’s internal requirement that it conduct its own appraisal), the Trust’s

representatives expressed the view that the price suggested by CORP might very well be reasonable. Had it not been for the Trust's concerns about the political repercussions of completing a sale transaction with CORP while the current proceedings are pending, I am confident that the parties could have reached agreement on the terms of a definitive sale agreement. If the Board ultimately authorizes the proposed abandonment, and the Coos Bay Subdivision is not purchased by the Port under the feeder line program, I believe that it is likely that the parties can complete such an agreement.

VERIFICATION

I, Todd N. Cecil, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this Supplemental Verified Statement.



Todd N. Cecil

Executed on September 23, 2008

1

From: Cecil, Todd (SATX) [Todd.Cecil@RailAmerica.com]
Sent: Monday, August 11, 2008 12:48 PM
To: Peter Ives
Subject: Oregon Coos Bay Line - Rail to Trail Opportunity

Importance: High

Attachments: CORP - STB Filing Map 070808.doc



CORP - STB Filing
Map 070808.d

Peter - It was good to speak with you this morning. As promised, I am attaching a map showing a rail line segment that we believe represents a terrific rails-to-trails opportunity.

This is the line segment owned by Central Oregon & Pacific Railroad that connects the Eugene area with the National Dunes Seashore area along the Pacific coast. The line runs through a heavily-forested part of the Siskiyou Mountains, and a scenic fresh water lake region just west of the mountains.

We would appreciate your assistance in quickly confirming that TPL has an interest in such a rails-to-trails project. Due to the railroad operating status of this line, analyzing its rails-to-trails potential is somewhat of a time-sensitive matter for us.

I look forward to discussing this further with you.

Regards,

Todd N. Cecil
Vice President - Real Estate
RailAmerica, Inc
1355 Central Parkway South - Suite 700
San Antonio, TX 78232
210) 841-8310

2

From: Peter Ives [Peter Ives@tpl.org]
Sent: Wednesday, August 13, 2008 1:17 PM
To: Todd.Cecil@RailAmerica.com, Hynes, Terence M
Cc: Owen Wozniak
Subject: Form of Confidentiality Agreement
Attachments: 081308 CONFIDENTIAL DISCLOSURE AGREEMENT.doc

Gentlemen, A draft is attached. Peter

Peter N. Ives
Regional Counsel - NWRO
The Trust for Public Land
1600 Lena Street, Ste. C
Santa Fe, NM 87505
505/988-5922, Ext. 107
505/988-5967 (Fax)
peter.ives@tpl.org
<http://www.tpl.org>

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3

From: Peter Ives [Peter.Ives@tpl.org]
Sent: Thursday, August 14, 2008 1:10 PM
To: Todd.Cecil@RailAmerica.com, Hynes, Terence M
Cc: Owen Wozniak
Subject: RE: Form of Confidentiality Agreement

Attachments: 081408 TPL CO&PRInc Confidentiality Agreement pdf



081408 TPL
CO&PRInc Confidential

Todd, I have accepted the changes made, printed and signed and scanned the document which is attached. Peter

Peter N. Ives
Regional Counsel - NWRO
The Trust for Public Land
1600 Lena Street, Ste. C
Santa Fe, NM 87505
505/988-5922, Ext. 107
505/988-5967 (Fax)
peter.ives@tpl.org
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>>> "Cecil, Todd (SATX)" <Todd.Cecil@RailAmerica.com> 08/14/08 10:39 AM >>>
Please sign, scan as PDF, and e-mail to me I'll take care of Railroad's signature immediately upon receipt.

Todd

From: Peter Ives [mailto:Peter.Ives@tpl.org]
Sent: Wednesday, August 13, 2008 6:01 PM
To: Cecil, Todd (SATX), thynes@sidley.com
Cc: Owen Wozniak
Subject: RE: Form of Confidentiality Agreement

Todd, Sorry, I had to run my son to the dentist's office. The proposed changes are fine with me. How do you want to work signatures We both could sign on our respective ends and fax signatures pages to each other. Or one could sign, scan as a pdf and send to the other to sign, scan and return Peter

Peter N. Ives
Regional Counsel NWRO

The Trust for Public Land
1600 Lena Street, Ste. C
Santa Fe, NM 87505
505/988-5922, Ext. 107
505/988-5967 (Fax)
peter.ives@tpl.org
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>>> "Cecil, Todd (SATX)" <Todd.Cecil@RailAmerica.com> 8/13/2008 3:49 PM >>>
Peter - Our in-house counsel made some slight changes to your draft confidentiality agreement. If these are acceptable to you, we are prepared to sign.

Please let me know.

Todd

From: Peter Ives [mailto:Peter.Ives@tpl.org]
Sent: Wednesday, August 13, 2008 12:17 PM
To: Cecil, Todd (SATX); thynes@sidley.com
Cc: Owen Wozniak
Subject: Form of Confidentiality Agreement

Gentlemen, A draft is attached. Peter

Peter N Ives
Regional Counsel - NWRO
The Trust for Public Land
1600 Lena Street, Ste. C
Santa Fe, NM 87505
505/988-5922, Ext. 107
505/988-5967 (Fax)
peter.ives@tpl.org
<http://www.tpl.org><<http://www.tpl.org>>

The Trust for Public Land - Conserving land for people since 1972. Because everyone needs a place to play outdoors.

CONFIDENTIALITY NOTICE· THIS MESSAGE IS INTENDED ONLY FOR THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED OR MAY HAVE BEEN SENT TO YOU IN ERROR. IT MAY CONTAIN INFORMATION THAT IS CONFIDENTIAL, PRIVILEGED AND EXEMPT FROM DISCLOSURE IF YOU ARE NOT THE INTENDED RECIPIENT OR BELIEVE THAT IT MAY HAVE BEEN SENT TO YOU IN ERROR, PLEASE DELETE IT FROM YOUR SYSTEM WITHOUT COPYING, PRINTING OR FORWARDING IT AND NOTIFY ME BY REPLY EMAIL OR BY CALLING (505) 988-5922 ext. 107. THANK YOU

IRS Circular 230 Disclaimer To comply with the requirements imposed by the IRS, I inform you that any federal tax advice contained in this communication (including attachments), unless specifically stated otherwise, is not intended or written to be used and cannot be used for purposes of (i) avoiding penalties under the Internal Revenue Code, or (ii)

promoting, marketing or recommending to another party any transaction or tax-related matter addressed herein.

4

CONFIDENTIAL DISCLOSURE AGREEMENT

This Confidential Disclosure Agreement ("Agreement") is made as of the ____ day of August, 2008, between Central Oregon & Pacific Railroad, Inc., a Delaware corporation ("DISCLOSER"), and The Trust for Public Land, a California nonprofit public benefit corporation ("RECIPIENT")

WHEREAS, DISCLOSER is in possession of certain confidential and proprietary information regarding the possible availability of certain real property (the "Property") owned by such DISCLOSER for sale for conservation purposes,

WHEREAS, it will be necessary for DISCLOSER to disclose the aforescribed confidential and proprietary information to representatives of RECIPIENT in connection with the possible acquisition by RECIPIENT of such real property ("Project") RECIPIENT desires to receive the confidential and proprietary information as necessary for evaluation, consideration and discussion in relation to and in support of the Project

NOW, THEREFORE, for good and valuable consideration, the receipt of which is acknowledged by RECIPIENT, it is agreed as follows:

- 1 **Confidential Information** For purposes of this Agreement, the term "Confidential Information" will mean the following: the environmental analyses, appraisals and title work relating to the Property, that is disclosed to RECIPIENT in its dealings with DISCLOSER
- 2 **Nondisclosure of Information** The RECIPIENT agrees to maintain all Confidential Information in strict confidence and not to use any of the Confidential Information for any purpose other than in support of the Project. The RECIPIENT further agrees not to disclose such Confidential Information to third parties without the prior written consent of DISCLOSER, and also agrees not to make copies of any materials provided by DISCLOSER except to the limited extent necessary to further the purpose of this Agreement. The RECIPIENT agrees to limit dissemination of the Confidential Information to those of its employees or agents having a need to know the Confidential Information for the purpose of this Agreement and who are bound by terms of confidentiality commensurate with those of this Agreement
- 3 **Exceptions to Nondisclosure** Nothing herein contained shall in any way restrict or impair the right of RECIPIENT to use, disclose or otherwise deal with anything which is not Confidential Information. The obligations of RECIPIENT set forth in Paragraph 2 above does not extend to information that is (a) already in the possession of RECIPIENT prior to receipt from DISCLOSER as evidenced by pre-existing documentation, (b) within the public domain or hereafter enters the public domain through no fault, action or failure to act by RECIPIENT, (c) rightfully disclosed to RECIPIENT by a third party

PN/TPL

on a non-confidential and non-restricted basis; or (d) independently developed by RECIPIENT without any reference to the Confidential Information of DISCLOSER

- 4 **Assignees and Successors** This Agreement will be binding upon the parties thereto and their respective assigns and successors
- 5 **Duration** All obligations under this Agreement shall continue for a period of three (3) years from the date of execution hereof, subject to the exceptions identified in Paragraphs 3 and 14
- 6 **Return of Confidential and Proprietary Information** RECIPIENT agrees to return to DISCLOSER all drawings, specifications and other materials written or recorded in any form, and any other tangible materials relating to said Confidential Information within ten (10) days after receipt by RECIPIENT of a written request therefore from DISCLOSER or upon termination of this Agreement. RECIPIENT may retain archival copies of the Confidential Information which it may use only in case of a dispute concerning this Agreement and subject to the obligations of confidentiality hereunder
- 7 **No License** It is understood and agreed that RECIPIENT shall not acquire any rights or license under any of said Confidential Information or any present or future patents or patent applications of DISCLOSER therefore by reason of this Agreement
- 8 **Injunctive Relief** It is understood and agreed that DISCLOSER shall have no liability to RECIPIENT for any loss or damage to RECIPIENT arising from the use of or reliance upon any information disclosed to RECIPIENT pursuant to this Agreement. RECIPIENT acknowledges that a breach, actual or threatened, of any term or condition of this Agreement will cause immediate and irreparable harm to DISCLOSER. DISCLOSER shall therefore have the right to seek immediate injunctive relief from a court of competent jurisdiction without having to prove irreparable harm and RECIPIENT shall stipulate to such court that such irreparable harm exists
- 9 **Governing Law** This Agreement will be construed for purposes in accordance with the substantive law of the State of Oregon. The state and federal courts of Oregon will have exclusive jurisdiction over any and all disputes relating to this Agreement, including the right to seek equitable relief to enforce this Agreement
- 10 **Termination** Either party may terminate this Agreement at any time by giving thirty (30) days' prior written notice to the other party
- 11 **No Partnership** This Agreement is intended only to facilitate the exchange of Confidential Information. Nothing contained in this Agreement shall be construed to create a teaming agreement, joint venture association, partnership, agency or other business arrangement. Neither party has any obligations to supply information hereunder, and neither party has an obligation hereunder to enter into any contract with the other party

PN/TPW

No Warranties. The Agreement does not guarantee any ability, express or implied, to use the information solely for the purposes for which it was provided. The parties shall be liable in damages of any kind as a result of any of the other party's reliance on or use for any purpose stated herein of the information exchanged hereunder.

13 Miscellaneous. Each party warrants that it has the full authority and power to enter into and perform under this Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter addressed herein and may not be amended or modified except by a writing signed by both parties. Failure to comply with any provision of this Agreement shall not constitute a waiver of any right hereof. This Agreement is deemed to have been jointly drafted by the parties and a construction or ambiguity shall not be construed for or against any party and no ambiguity or drafting error by any party. This Agreement may be executed simultaneously in counterparts that when put together shall be deemed an original and constitute one and the same document. Facsimile transmission of executed signature pages shall be sufficient to bind the executing party.

14 Disclosure Required by Law. Disclosure of Confidential Information shall not be precluded if such disclosure is a necessary part of a subpoena or a court order or other government body or a public or confidential source, provided however that DISCLOSURE is on a reasonable basis and the third party (s) to which the source is under such order is provided a protective order requiring that disclosure of information so disclosed be used only for the purposes for which the order was issued, or otherwise required by law or otherwise necessary to establish right or enforce obligations hereunder, but only to the extent that any such disclosure is necessary.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the first date set forth below.

RECIPIENT

The Trust For Public Land Inc

By 


Name PETER N. IVES

Title REGIONAL COUNSEL

Date 8-14-08

DISCLOSER

Central Oregon & Pacific Railroad, Inc

By 

Name Sandra K. Kamecki

Title VP Contracts

Date 8-14-08

5

From: Peter Ives [mailto:Peter.Ives@tpl.org]
Sent: Thursday, August 21, 2008 11:20 AM
To: Cecil, Todd (SATX)
Subject: Re: Oregon trail

Todd, Sorry not to be back to you. It has been received and Owen and I are reviewing internally. Peter

Peter N. Ives
Regional Counsel - NWRO
The Trust for Public Land
1600 Lena Street, Ste. C
Santa Fe, NM 87505
505/988-5922, Ext. 107
505/988-5967 (Fax)
peter.ives@tpl.org
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>>> "Cecil, Todd (SATX)" <Todd.Cecil@RailAmerica.com> 8/21/2008 10:11 AM >>>

Peter - Just checking in to confirm whether you have received the data covering the Coos Bay line If you have any questions, please call

Todd

Todd N Cecil
Vice President - Real Estate
RailAmerica, Inc
1355 Central Parkway South - Suite 700
San Antonio, TX 78232
(210) 841-8310

6

From: Peter Ives [mailto:Peter.Ives@tpl.org]
Sent: Friday, August 22, 2008 1:18 PM
To: Cecil, Todd (SATX)
Cc: Owen Wozniak
Subject: Coos Bay Line

Todd, Attached is a typical form of TPL Option Agreement per our conversation. Peter

Peter N. Ives
Regional Counsel - NWRO
The Trust for Public Land
1600 Lena Street, Ste. C
Santa Fe, NM 87505
505/988-5922, Ext. 107
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BARGAIN SALE OPTION AGREEMENT

This Agreement is made this ____ day of _____, 200__, by and between _____ ("Seller"), and _____ (ABuyer@)

RECITALS

WHEREAS, Seller owns _____ acres, more or less, located in _____ County, _____, and described in Exhibit A attached hereto and incorporated herein by this reference. Said real property shall be referred to in this Agreement as the " Subject Property "

WHEREAS, Seller desires to grant an option to the Buyer and Buyer desires to obtain an option from the Seller, to evaluate and then to acquire the Subject Property.

WHEREAS, Buyer is a _____ organization, having among its purposes the acquisition of real property for the purposes of _____. Buyer is exempt from taxation under Section 501(c)(3) of the Internal revenue Code. Buyer is not a private foundation within the meaning of Section 509(a) of the Internal Revenue Code.

WHEREAS, Seller acknowledges that Buyer is entering into this Agreement in its own right and that Buyer is not an agent of any governmental agency or entity

WHEREAS, Seller acknowledges that upon acquisition of the Subject Property Buyer shall be free to use and dispose of the Subject Property in any manner Buyer deems appropriate provided that the proceeds of any such sale be devoted to Buyer's charitable purposes

WHEREAS, Seller believes that the purchase price for the Subject Property, which is specified in this Agreement is below fair market value Seller intends that the difference between the purchase price and the fair market value shall be a charitable contribution to Buyer However, Buyer makes no representation as to the tax consequences of the transaction contemplated by this Agreement Seller will obtain independent tax counsel and be solely responsible for compliance with the gift value substantiation requirements of the Internal Revenue Code. To the extent that the purchase price is below the fair market value, the parties agree that it does not reflect the existence of defects in the Subject Property, such as environmental conditions requiring remediation, known to Seller or Buyer.

TERMS

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree to be mutually and contractually bound as follows

I _____ Option In consideration of the payment by Buyer to Seller of _____ Dollars (\$ _____), receipt of which is hereby acknowledged, Seller grants to Buyer an exclusive and

irrevocable option to purchase the Subject Property on the terms and conditions set forth in this Agreement (the "Option").

2. Term Buyer's Option shall run for a period of _ ____ () ____s from the date of this Agreement first above set forth.

3. Exercise. In the event Buyer exercises the Option, it shall do so by notifying Seller within the term specified in Section 2. Such notice shall be deemed timely if it is deposited in the mail, first class postage prepaid, telecopied or delivered personally by courier or Express Mail within the term specified in Section 2

4 Purchase Terms

a. Price. In the event Buyer exercises its option, Seller shall sell to Buyer and Buyer shall buy from Seller the Subject Property for a purchase price (the "Purchase Price") equal to _____, as determined by a full narrative written appraisal of the Subject Property, which appraisal has been finally approved by the public agency to which Buyer ultimately intends to convey the Subject Property (the "Appraisal")

b. Bargain Sale. Buyer and Seller acknowledge that Buyer is a non-profit corporation qualified under Section 501(c)(3) of the Internal Revenue Code, is an "eligible donee" as described in Treasury Regulation 1.170A-14(c), and that Seller may convey the Property to Buyer at a nominal price that is significantly less than its fair market value thereby making a bargain sale to Buyer, and that Seller intends to take a charitable deduction for the difference between the purchase price and the fair market value of the Property. Notwithstanding the foregoing, Seller, at its sole expense, shall pay all costs, expenses and fees incurred in connection with its attempt to realize a charitable deduction in connection with the sale of the Property under this Option Agreement, including, but not limited to, attorneys' fees and accountants' fees. Seller hereby acknowledges and agrees that Buyer has made no warranty or representation as to Seller's entitlement or ability to realize any tax benefits in connection with this Option Agreement, and Seller will retain independent legal and tax counsel in its attempt to realize any tax benefits therefrom

c. Method of Payment. The Purchase Price shall be payable as follows: _____.

5. Closing. Final settlement of the obligations of the parties hereto ("Closing") shall occur _____ () days after the Buyer's exercise of the Option, or as otherwise agreed to by the parties, at such date, place and time as the parties shall mutually agree.

6. Title, Survey and Appraisal

a. Seller shall convey to Buyer by a General Warranty Deed marketable title to the Subject Property

b. This Agreement is entered into without the benefit of a current title commitment on the Subject Property. Within _____ () days after the date of this Agreement, Buyer, at Seller's sole cost and expense, shall order such a commitment from a title insurance company authorized to do business in _____ County, _____, together with copies of all of the documents referred to therein as exceptions. Not later than _____ () after _____ () days of receipt of the current title commitment and copies of the documents referred to above, Buyer shall advise Seller of any exceptions in the title commitment that Buyer will require to be removed on or before Closing. Thereafter Seller shall use reasonable efforts to assure the removal of any such objectionable exceptions by Closing. In the event Seller is unable or unwilling to remove any such exceptions to which Buyer has objected Buyer may elect to (1) terminate this Agreement, in which case Buyer shall have no obligation to purchase the Subject Property, or (2) proceed with the purchase of the Subject Property and accept a policy of title insurance with the exceptions to which Buyer objected. In any event, Seller shall satisfy and discharge all monetary liens and encumbrances (except any statutory liens for nondelinquent real property taxes) affecting the Subject Property.

c. Survey. Seller shall provide to Buyer within _____ () days of the date of this Agreement copies of any surveys of the Subject Property (the ASurvey@) in Seller=s possession or control. If the survey provided to Buyer by Seller is deemed by Buyer to be insufficient in any manner, Buyer shall advise Seller of any exceptions to the survey which Buyer will require to be removed or corrected on or before Closing. Thereafter Seller shall use reasonable efforts to assure the removal of any such objectionable matters by Closing. In the event Seller is unable or unwilling to resolve any such matters to which Buyer has objected Buyer may elect to (1) terminate this Option, in which case Buyer shall have no obligation to purchase the Subject Property, or (2) proceed with the purchase of the Subject Property and accept the Subject Property with the survey exceptions to which Buyer objected. Buyer shall further have the right to conduct an updated survey on the Subject Property in Buyer=s sole discretion.

d. Appraisal. Within _____ () days of the date of this Agreement, _____ shall contract for an appraisal of the Subject Property to be performed by a licensed appraiser selected by _____. The cost of the appraisal shall be an expense of _____. _____=s obligation to close this transaction shall be conditioned upon (i) _____=s review and written approval of the final full narrative appraisal report on or before Closing.

7 Title Insurance. Seller shall, at Seller's sole cost and expense, provide Buyer with an [ALTA] standard coverage owner's policy of title insurance in the full amount of the Purchase Price insuring that title to the Subject Property is vested in Buyer at Closing subject only to the exceptions noted in Section 6 that are acceptable to Buyer.

8 Seller's Covenants. Seller covenants that, from and after the date hereof until the Closing, Seller will not

(a) make or permit to be made, extend or permit to be extended, any leases, contracts, options or agreements whatsoever affecting the Subject Property, nor shall Seller cause or permit any lien, encumbrance, mortgage, deed of trust, right, restriction or easement to be placed

upon or created with respect to the Subject Property, except pursuant to this Agreement;

(b) remove or permit the removal of any vegetation, soil or minerals from the Subject Property or disturb or suffer the disturbance of the existing contours and/or other natural features of the land in any way whatsoever;

(c) cause or permit any dumping or depositing of any materials on the Subject Property, including, without limitation, garbage, construction debris or solid or liquid wastes of any kind; or,

(d) cause or permit any default beyond the applicable cure period under any mortgage or deed of trust covering the Subject Property, or cause or permit the foreclosure of any other lien affecting the Subject Property.

Seller shall promptly cure, at Seller's sole cost and expense, each and every breach or default of any covenant set forth in this paragraph upon receipt of notice thereof by Buyer

9. Seller's Representations and Warranties Seller makes the following representations and warranties:

a Seller has full power and authority to enter into this Agreement (and the persons signing this Agreement for Seller have full power and authority to sign for Seller and to bind it to this Agreement, and to sell, transfer and convey all right, title and interest in and to the Subject Property

b The conveyance of the Subject Property in accordance with this Agreement will not violate any provision of state or local subdivision laws and regulations

c The Subject Property has improved, insurable vehicular access to a public road.

d No one other than Seller is, or will be, in possession of or own any portion of the Subject Property

e There is no suit, action, arbitration, or legal, administrative or other proceeding or injury pending or threatened against the Subject Property or any portion thereof or pending or threatened against Seller which could affect Seller's title to the Subject Property or any portion thereof, affect the value of the Subject Property, or any portion thereof, or subject an owner of the Subject Property, or any portion thereof to liability.

f No labor or materials have been furnished to the Subject Property within the period provided by law for the filing of mechanics liens and there are no pending contracts for improvements to the Subject Property and there are no actual or impending mechanics liens against the Subject Property or any portion thereof, or

g. There is no condition at, on, under or related to the Subject Property presently or potentially posing a significant hazard to human health or the environment. There has been no production, use, treatment, storage, transportation, or disposal of any Hazardous Substance (as hereinafter defined) on the Subject Property, nor has there been any release or threatened release of any Hazardous Substance, pollutant or contaminant into, upon or over the Subject Property or into or upon ground or surface water at the Subject Property. No Hazardous Substance is now or ever has been stored on the Subject Property in underground tanks, pits or surface impoundments. There are no asbestos-containing materials incorporated into the buildings or interior improvements or equipment that are part of the Subject Property, if any, nor is there any electrical transformer, fluorescent light fixture with ballasts or other PCB item on the Subject Property. As used herein, "Hazardous Substance(s)" means any substance which is (i) defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof, (iii) hazardous, toxic, corrosive, flammable, explosive, infectious, radioactive, carcinogenic, or reproductive toxicant, (iv) regulated pursuant to any Environmental Law(s), or (v) any pesticide regulated under state or federal law. Seller is in compliance with all laws and regulations in connection with any handling, use, storage or disposal of Hazardous Substances including the maintenance of all required permits and approvals.

h. Neither the grant nor the exercise of the Option will constitute a breach or default under any agreement to which Seller is bound and/or to which the Subject Property is subject.

i. There are no encumbrances or liens against the Subject Property, including, but not limited to mortgages or deeds of trust, other than as are set forth in the title commitment referenced in Section 6.

Each of the above representations is material and is relied upon by Buyer. Except insofar as Seller has advised Buyer in writing to the contrary, each of the above representations shall be deemed to have been made as of Closing and shall survive Closing.

10. Remedies upon Default. In the event Seller defaults in the performance of any of Seller's obligations under this Agreement, Buyer shall, in addition to any and all other remedies provided in this Agreement or at law or in equity, have the right of specific performance against Seller. In the event Buyer defaults in the performance of any of Buyer's obligations under this Agreement, Seller shall have the right to _____.

11. Right to Inspect Subject Property. During the term of this Agreement, Buyer, through its employees and agents, and at its sole cost and expense, may enter upon the Subject Property for the purpose of making inspections and investigations as Buyer deems appropriate, including, without limitation, making an environmental assessment of the soils, waters and improvements, if any, on the Subject Property (the "Initial Inspection"). Seller hereby authorizes Buyer, its agents or employees to make all such inquiries of any governmental agencies as Buyer or its agents deem necessary or appropriate in connection with its inspections and investigations.

Buyer reserves the right to reinspect the Property prior to Closing (the "Pre-Closing Inspection") to determine that the Subject Property is in the same conditions as at the time of the Initial Inspection. If during the Pre-Closing Inspection Buyer determines that the condition of the Subject Property has changed, Buyer shall have the right to terminate this Agreement and have no obligation to purchase the Subject Property.

12. Risk of Loss All risk of loss shall remain with Seller until Closing. In the event the Subject Property is destroyed or damaged prior to Closing, Buyer shall have the right at its option to terminate this Agreement by written notice to Seller, and thereupon Seller shall refund to Buyer the full amount of the Option Consideration.

13. Condemnation In the event of the taking of all or any part of the Subject Property by eminent domain proceedings, or the commencement of such proceedings prior to Closing, Buyer shall have the right, at its option, to terminate this Agreement by written notice to Seller.

14. Prorations and Fees Real property taxes on the Subject Property shall be prorated as of the date of Closing based upon the latest available tax bill. All levied and pending special assessments against the Subject Property shall be paid in full by Seller. Other fees and charges not otherwise allocated in this Agreement shall be allocated in accordance with the customary practice of the county in which the Subject Property is located or as otherwise provided herein.

15. Notices All notices pertaining to this Agreement shall be in writing delivered to the parties personally, by facsimile transmission, by commercial express courier service or by first class United States mail, postage prepaid, addressed to the parties at the addresses set forth below. All notices given personally, or by commercial express courier service shall be deemed given when delivered. All notices given by mail shall be deemed given when deposited in the mail, first class postage prepaid, addressed to the party to be notified. All notices transmitted by facsimile shall be deemed given when transmitted. The parties may, by notice as provided above, designate a different address to which notice shall be given.

If to Seller:

If to Buyer:

16. Attorneys' Fees If any legal action is brought by either party to enforce any provisions of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and court costs in such amounts as shall be allowed by the court.

17. Broker's Commission Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party on account of whose actions the claim is asserted will indemnify

and hold the other party harmless from and against said claim and such indemnification obligation shall survive Closing or any earlier termination of this Agreement.

18. Binding on Successors. This Agreement shall be binding not only upon the parties but also upon their heirs, personal representatives, assigns, and other successors in interest.

19 Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between Buyer and Seller pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. No supplement, modification, waiver or amendment of this Agreement shall be binding unless specific and in writing executed by the party against whom such supplement, modification, waiver or amendment is sought to be enforced. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

20 Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect

21 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of _____

22 Possession. Possession of the Subject Property shall be delivered on the date of Closing in the same condition as it is on the date hereof and/or as required pursuant to the terms of this Agreement, ordinary wear and tear excepted, free and clear of the rights or claims of any other party

23 Confidentiality The parties hereto agree that the terms of this Agreement, including but not limited to the Purchase Price, shall remain confidential, and that copies of this Agreement, or the contents thereof, shall not be provided to anyone other than the parties or their respective attorneys, employees or representatives or the title company or as otherwise provided for hereunder, unless compelled to produce this Agreement pursuant to legal process

34. Time is of the Essence. Time is of the essence of this Agreement

33. Non-Foreign Certificate/Patriot Act Compliance. Seller shall at closing, as required by law, execute a Non-Foreign Certificate and shall deliver such certificate to the title company. Seller has not engaged in any dealings or transactions, directly or indirectly, (i) in contravention of any U.S., international or other anti-money laundering regulations or conventions, including without limitation the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986, the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, Trading with the Enemy Act (50 U.S.C. § 1 et seq., as amended), any foreign asset control regulations of the United States Treasury

Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 and the regulations promulgated thereunder (collectively, the "Patriot Act"), or any order issued with respect to anti-money laundering by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), or (ii) in contravention of Executive Order No. 13224 issued by the President of the United States on September 24, 2001 (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time to time ("Executive Order 13224") or (iii) on behalf of terrorists or terrorist organizations, including those persons or entities that are included on any relevant lists maintained by the United Nations, North Atlantic Treaty Organization, Organization of Economic Cooperation and Development, OFAC, Financial Action Task Force, U.S. Securities & Exchange Commission, U.S. Federal Bureau of Investigation, U.S. Central Intelligence Agency, U.S. Internal Revenue Service, or any country or organization, all as may be amended from time to time.

36 Miscellaneous In the event that any of the deadlines set forth herein end on a Saturday, Sunday or legal holiday, such deadline shall automatically be extended to the next business day which is not a Saturday, Sunday or legal holiday. The term "business days" as may be used herein shall mean all days which are not on a Saturday, Sunday or legal holiday.

IN WITNESS of the foregoing provisions, the parties have executed and delivered this Agreement as of the date first set forth above.

SELLER:

BUYER.

EXHIBIT A

Legal description of the Property.

EXHIBIT 2

Central Oregon & Pacific Railroad

DAILY OPERATING BULLETIN NO. 550

EFFECTIVE AT 0001 September 30, 2007

OPERATING RULE OF THE WEEK:

GCOR: 7.2 ~ COMMUNICATION BETWEEN CREWS SWITCHING

SAFETY RULES OF THE WEEK:

SWP : SOFA #2 ~ PROTECT EMPLOYEES AGAINST MOVING EQUIPMENT

MofW: 808

MECHANICAL: 5.13 ~ BLUE SIGNAL PROTECTION OF WORKMEN

Clerical Rule: 1.17 ~ HOURS OF SERVICE LAW

SIGNAL RULE: 236.23 ~ ASPECTS & INDICATIONS

Where Form "A" is shown, do not exceed the speed indicated "Flags at" column is used when flags are displayed less than distance prescribed by Rule 5.4.2 to indicate location.

Where Form "B" is shown be governed by Rules 15.2, 15.2.1, 15.2.2 within the limits shown.

Where Form "C" is shown -be governed by the instructions contained herein.

| Item | Mileage | Limit | Speed | From Limit | FOREMAN | FLAG | |
|----------------------|---------|---------|-------|------------|---|---------|------|
| Roseburg Subdivision | | | | | | | |
| Verd | Item | Mileage | Limit | Speed | From Limit | FOREMAN | FLAG |
| 1 | A | 644.3 | 643.6 | 10 MPH | (Gauge & Surface) | Wagner | None |
| 2 | A | 643.2 | 642.5 | 10 MPH | (Gauge & Surface) | Pacheco | None |
| 3 | A | 642.0 | 641.9 | 10 MPH | (Ties) | Wagner | None |
| 4 | A | 641.0 | 640.5 | 10 MPH | (Gauge & Surface) | Wagner | None |
| 5 | A | 639.0 | 638.9 | 10 MPH | (Surface) | Wagner | None |
| 6 | A | 638.4 | 638.2 | 10 MPH | (Surface) | Wagner | None |
| 7 | C | 635.5 | | | Oregon Ave, Creswell, Siding Only, 13 Second Delay On Crossing Activation | Boyter | |
| 8 | A | 635.3 | 635.0 | 10 MPH | (Surface) | Wagner | None |
| 9 | A | 632.4 | 632.2 | 10 MPH | (Ties) | Wagner | None |
| 10 | A | 630.7 | 630.0 | 10 MPH | (Gauge & Surface) | Wagner | None |
| 11 | A | 629.7 | 628.9 | 10 MPH | (Surface) | Wagner | None |
| 12 | C | 629.0 | | | Switch 5950, Saginaw Out Of Service Due To MofW | Sims | |
| 13 | A | 628.0 | | 10 MPH | (Rail) | Sims | None |
| 14 | A | 627.5 | 627.1 | 10 MPH | (Surface) | Wagner | None |
| 15 | C | 626.6 | | | Main St, Cottage Grove, Siding Only, 20 Second Delay On Crossing Activation | Boyter | |
| 16 | A | 624.8 | 624.4 | 10 MPH | (Surface) | Wagner | None |
| 17 | A | 623.8 | 623.6 | 10 MPH | (Surface) | Wagner | None |
| 18 | A | 622.5 | 622.4 | 10 MPH | (Surface) | Wagner | None |
| 19 | C | 621.7 | | | Switch 5960 south end out of service due to MofW equipment | Sims | |
| 20 | A | 621.7 | 621.6 | 10 MPH | (Frog & Surface) | Wagner | None |
| 21 | A | 620.1 | 619.2 | 10 MPH | (Gauge & Surface) | Wagner | None |
| 22 | A | 617.7 | 616.6 | 10 MPH | (Surface) | Wagner | None |
| 23 | A | 612.7 | 611.9 | 10 MPH | (Gauge) | Wagner | None |
| 24 | A | 610.9 | 610.0 | 10 MPH | (Gauge & Surface) | Wagner | None |
| 25 | A | 609.2 | 609.0 | 10 MPH | | Wagner | None |
| 26 | C | 609.0 | | | Switch 5976 Drain Out Of Service Due To MofW Equipment. | Sims | |
| 27 | A | 607.9 | 607.6 | 10 MPH | (Gauge) | Wagner | None |
| 28 | A | 604.7 | 604.0 | 10 MPH | (Gauge & Surface) | Wagner | None |
| 29 | A | 603.0 | 602.8 | 10 MPH | (Surface) | Wagner | None |
| 30 | A | 600.5 | 598.6 | 10 MPH | (Gauge & Surface) | Wagner | None |
| 31 | A | 595.0 | 594.0 | 10 MPH | (Gauge & Surface) | Wagner | None |
| 32 | A | 592.9 | 592.6 | 10 MPH | (Surface) | Wagner | None |
| 33 | A | 590.1 | 589.9 | 10 MPH | (Alignment) | Wagner | None |
| 34 | A | 589.6 | 589.5 | 10 MPH | North Switch Oakland. (Ties) | Wagner | None |
| 35 | A | 586.2 | 586.1 | 10 MPH | (Switch) | Pacheco | None |

| | | | | | | |
|----|---|-------|-------|--|-------------|------|
| 36 | A | 581.7 | 581.5 | 10 MPH (Rail) | Wagner | None |
| 37 | A | 579.0 | 578.8 | 10 MPH (Frog) | Pacheco | None |
| 38 | A | 576.4 | 575.9 | 10 MPH (Ties & Rail) | Wagner | None |
| 39 | A | 574.0 | 572.3 | 10 MPH (Surface & Gauge) | Wagner | None |
| 40 | C | 572.4 | 572.0 | (Rail On Toe Path Between Main & Track 6101) | Wagner | |
| 41 | A | 571.1 | 570.7 | 10 MPH (Surface) | Wagner | None |
| 42 | A | 570.1 | 569.9 | 10 MPH (Surface & Gauge) | Wagner | |
| 43 | A | 569.3 | 569.1 | 10 MPH (Surface) | Wagner | None |
| 44 | A | 568.5 | 567.6 | 10 MPH (Surface & Ties & Frog) | Wagner | None |
| 45 | A | 566.8 | 566.2 | 10 MPH (Surface) | Wagner | None |
| 46 | A | 565.0 | 559.0 | 10 MPH (Surface) | Wagner | None |
| 47 | C | 563.0 | | Dillard Detector Out Of Service Waiting On Parts | Perry | |
| 48 | C | 560.3 | | Switch 6429, Bad Footing Conditions Exists | G.Castillo | |
| 49 | C | 560.3 | | Track 6430 Out Of Service | J.Gomes | |
| 50 | C | 560.3 | | Track 6431, Dillard Lead Of Track, To Remain Clear From Building To Foul Due To Dock Roofing Project | Jenks | |
| 51 | A | 558.2 | 558.1 | 10 MPH (Surface Over Crossing) | Wagner | None |
| 52 | A | 554.2 | 552.9 | 10 MPH (Surface & Ties) | Wagner | None |
| 53 | A | 551.5 | 551.4 | 10 MPH (Gauge) | Anderson | None |
| 54 | A | 551.2 | 551.1 | 10 MPH (Surface) | Anderson | None |
| 55 | A | 550.4 | 549.4 | 10 MPH (Surface) | Anderson | None |
| 56 | A | 548.9 | 548.8 | 10 MPH (Surface) | Anderson | None |
| 57 | A | 548.0 | 547.9 | 10 MPH (Surface) | Anderson | None |
| 58 | A | 547.7 | 547.6 | 10 MPH (Surface) | Anderson | None |
| 59 | A | 545.9 | 545.8 | 10 MPH Switch 6462 (Guard Check Gauge) | Wagner | None |
| 60 | A | 545.4 | 544.6 | 10 MPH (Surface) | Anderson | None |
| 61 | C | 542.5 | | Track 6485 Out Of Service Due To MofW | I. Castillo | |
| 62 | C | 541.9 | | Track 6487, 6486 & 6485 Uneven Footing Conditions Exist | Anderson | |
| 63 | C | 522.5 | | Be Prepared To Stop Short Of <u>SLIDE</u> | Anderson | |
| 64 | A | 511.6 | 511.4 | 10 MPH (Gauge) | Anderson | None |
| 65 | A | 509.5 | 509.4 | 10 MPH (Gauge) | Anderson | None |
| 66 | A | 507.9 | 507.8 | 10 MPH (Gauge & Crossing) | Anderson | None |
| 67 | C | 507.9 | | Switch 6525 Out Of Service Due To MofW | R.Castillo | |
| 68 | A | 500.0 | 499.9 | 10 MPH (Gauge & Crossing) | Anderson | None |
| 69 | A | 498.3 | 498.2 | 10 MPH (Gauge) | Anderson | None |
| 70 | A | 497.4 | 497.3 | 10 MPH (Gauge) | Anderson | None |
| 71 | A | 497.0 | 496.9 | 10 MPH (Gauge) | Anderson | None |
| 72 | A | 495.1 | 495.0 | 10 MPH (Sun Kink) | Anderson | None |
| 73 | A | 494.0 | 493.9 | 10 MPH (Gauge) | Anderson | None |
| 74 | A | 491.1 | 491.0 | 10 MPH (Gauge) | Anderson | None |
| 75 | A | 490.6 | 488.0 | 10 MPH (Gauge) | Anderson | None |
| 76 | C | 487.4 | | Track 6570 Hugo Siding Out Of Service | Anderson | |
| 77 | A | 487.4 | 487.2 | 10 MPH (Gauge & Crossing) | Anderson | Yes |
| 78 | C | 482.6 | 482.5 | Uneven Footing Conditions Exist In Siding Track 6762 | Anderson | |
| 79 | C | 479.9 | | Camp Joy rd crossing devices disabled comply w/rule 6.32.2 | Hunt | |
| 80 | A | 479.0 | 478.4 | 10 MPH (Surface) | Anderson | None |
| 81 | C | 478.3 | | Plum Tree lane Crossing devices disabled comply w/rule 6.32.2 | Hunt | |
| 82 | A | 476.0 | 475.0 | 10 MPH (Surface) | Anderson | None |
| 83 | A | 458.8 | 458.7 | 10 MPH (Gauge & Crossing) | Anderson | Yes |
| 84 | A | 450.7 | 450.6 | 10 MPH (Ties) | Anderson | None |
| 85 | A | 444.0 | 442.9 | 10 MPH (Surface & Bars) | Anderson | None |

| | | | | | | |
|-----|---|-------|-------|--|------------|------|
| 86 | A | 497.4 | 497.3 | 10 MPH (Gauge) | Anderson | None |
| 87 | A | 497.0 | 496.9 | 10 MPH (Gauge & Ties) | Anderson | None |
| 88 | A | 495.1 | 495.0 | 10 MPH (Sun Kink) | Anderson | None |
| 89 | C | 494.1 | | (Switch 6560 south end out of service due to mofw. Equipment | R.Castillo | |
| 90 | A | 494.0 | 493.9 | 10 MPH (Gauge) | Anderson | None |
| 91 | A | 491.1 | 491.0 | 10 MPH (Gauge) | Anderson | None |
| 92 | A | 490.6 | 488.0 | 10 MPH (Gauge) | Anderson | None |
| 93 | C | 487.4 | | Track 6570 Hugo Siding Out Of Service | Anderson | |
| 94 | A | 487.4 | 487.2 | 10 MPH (Gauge & Crossing) | Anderson | Yes |
| 95 | C | 482.6 | 482.5 | Uneven Footing Conditions Exist In Siding Track 6762 | Anderson | |
| 96 | A | 473.6 | 473.5 | 10 MPH (Frog @ 6701) | Anderson | |
| 97 | A | 458.8 | 458.7 | 10 MPH (Gauge & Crossing) | Anderson | Yes |
| 98 | A | 451.1 | 451.0 | 10 MPH (Sun Kink) | Anderson | None |
| 99 | A | 444.0 | 443.0 | 10 MPH (Surface) | Anderson | None |
| 100 | C | 443.8 | | Switch 7238 Out Of Service Due To Debris | Anderson | |

Siskiyou Subdivision

| Vol | Item | Mileage | Limit | Speed | From-Until | FOREMAN | FLAGS |
|-----|------|---------|-------|--------------------------------|--|------------|-------|
| 101 | A | 444.0 | 443.0 | 10 MPH (Surface) | | Anderson | None |
| 102 | C | 443.8 | | | Switch 7238 Out Of Service Due To Debris | Anderson | |
| 103 | A | 437.1 | 437.0 | 10 MPH (Ties) | | Padula | None |
| 104 | A | 431.8 | | 10 MPH (Warp) | | Padula | None |
| 105 | C | 429.4 | 377.0 | | Uneven Footing Conditions Exist Ties & Rail In Toe Path | Padula | |
| 106 | C | 426.0 | | | Track 7481 Crowman Siding Out Of Service Due To MofW Equipment | G.Castillo | |
| 107 | C | 423.3 | | | Hot Box Detector Out Service | Fries | |
| 108 | C | 412.9 | | | North Switch Siskiyou Siding, Track 7411 Out Of Service | Padula | |
| 109 | C | 412.1 | 412.0 | | Track 7518 On Siskiyou Siding North & South End Out Of Service Due To MofW | Padula | |
| 110 | A | 400.0 | 399.6 | 10 MPH (Surface) | | Padula | None |
| 111 | A | 398.3 | 396.7 | 10 MPH (Surface & Gauge) | | Padula | None |
| 112 | C | 398.0 | | | Track Side Detector Out Of Service Due To Weather | Fries | |
| 113 | A | 393.3 | 393.2 | 10 MPH (Ties) | | Padula | None |
| 114 | A | 391.7 | 385.4 | 10 MPH (Surface & Gauge) | | Padula | None |
| 115 | A | 375.5 | | 10 MPH (Surface) | | Padula | None |
| 116 | A | 358.9 | 358.7 | 10 MPH (Surface & Ties) | | Padula | None |
| 117 | C | 356.0 | 345.5 | | Uneven Footing Conditions Exist Ties & Rail In Toe Path | Padula | |
| 118 | A | 353.3 | 345.3 | 10 MPH (Gauge, Rail & Surface) | | Padula | None |

Coos Bay Subdivision

| Vol | Item | Mileage | Limit | Speed | From-Until | FOREMAN | FLAGS |
|-----|------|---------|-------|--------------------------------|---|---------|-------|
| 119 | A | 653.1 | 653.5 | 10 MPH (Surface) | | Rodley | None |
| 120 | A | 656.0 | 656.3 | 10 MPH (Warp & Cross Level) | | Rodley | None |
| 121 | A | 660.0 | 661.0 | 10 MPH (Ties) | | Rodley | None |
| 122 | A | 665.4 | | 10 MPH (Gauge) | | Rodley | None |
| 123 | A | 666.1 | 668.0 | 10 MPH (Surface & Gauge) | | Wagner | None |
| 124 | A | 668.0 | 696.9 | 10 MPH (Surface, Gauge & Ties) | | Wagner | None |
| 125 | C | 668.3 | | | Track 3611 Vaughn Siding Out Of Service Due To MofW Equipment | Avery | |
| 126 | C | 680.1 | | | Dragger Out Of Service Due To Defective Talker | Okray | |
| 127 | C | 681.5 | | | Both Sides Of Walkway Out Of Service | Shankle | |
| 128 | A | 696.9 | 721.9 | 10 MPH (Surface & Gauge) | | Wagner | None |
| 129 | C | 698.0 | | | Track 3622 Out Of Service Due To MofW | Gomez | |
| 130 | A | 698.0 | 703.0 | 10 MPH (Warp) | | Rodley | None |
| 131 | A | 704.5 | 704.9 | 10 MPH (Warp) | | Rodley | None |

| | | | | | |
|-------|-------|-------|--------|--|-------------|
| 132 C | 705.4 | | 10 MPH | Main Line Crossover Switch Out Of Service | Rodley |
| 133 A | 708.8 | 710.0 | 10 MPH | (Warp) | Rodley None |
| 134 A | 711.3 | 711.4 | 10 MPH | (Ties) | Rodley None |
| 135 A | 712.5 | 716.0 | 10 MPH | (Warp & Ties) | Rodley None |
| 136 C | 716.3 | | | Cushman Drawbridge Walkway's Out Of Service | Shankle |
| 137 A | 717.4 | 717.6 | 10 MPH | (Ties) | Rodley None |
| 138 A | 719.1 | 719.2 | 10 MPH | (Bridge) | Rodley None |
| 139 C | 720.4 | 721.3 | | Uneven Footing Conditions Exist & Walkways Out Of Service | Rodley |
| 140 C | 720.8 | 721.1 | | Be Prepared To <u>STOP SHORT</u> Of Debris | Rodley None |
| 141 A | 720.9 | | 5 MPH | (Close Clearance) | Rodley None |
| 142 A | 721.9 | 722.3 | 10 MPH | (Warp) | Rodley None |
| 143 A | 725.1 | 725.6 | 10 MPH | (Warp) | Rodley None |
| 144 A | 728.8 | 730.1 | 10 MPH | (Warp & Gauge) | Rodley None |
| 145 A | 733.3 | 737.0 | 10 MPH | (Warp) | Rodley None |
| 146 A | 734.3 | 734.6 | 10 MPH | Be Prepared To Stop Short Of Falling Debris | A. French |
| 147 A | 734.6 | | 5 MPH | (Close Clearance) | Rodley None |
| 148 C | 740.0 | 740.3 | | North Reedsport Auxiliary Track Out Of Service | Rodley |
| 149 A | 741.0 | 743.7 | 10 MPH | (Warp & Gauge) | Rodley None |
| 150 A | 743.7 | 743.8 | 10 MPH | (Trestle) | Rodley None |
| 151 A | 744.0 | 745.6 | 10 MPH | (Warp & Gauge) | Rodley None |
| 152 C | 746.3 | | | Be Prepared To Stop Short Of Falling Debris | Jenks |
| 153 A | 746.3 | 750.4 | 10 MPH | (Warp & Gauge) | Rodley None |
| 154 A | 751.2 | 753.5 | 10 MPH | (Warp & Gauge) | Rodley None |
| 155 A | 754.0 | 762.6 | 10 MPH | (Warp & Gauge) | Rodley None |
| 156 C | 763.0 | | | Track 3672 Cordes Siding Be Prepared To Stop Short Of Sand Pile. | French |

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General Notices In Effect - 1,2,3,4,5

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EXHIBIT 3



OregonLive.com

Everything Oregon

Abandoned Ore. rail line getting pricier

9/23/2008, 1:39 a.m. PT

The Associated Press

COOS BAY, Ore. (AP) — There's good news and bad news in the International Port of Coos Bay's effort to take over a rail line that runs from Coos Bay to Eugene.

Inspectors have determined that critical pieces of the 111-mile line are in no worse shape than they were last September, when the railroad's owner halted traffic because of safety concerns.

Having the line in relatively decent shape is important because it might be more expensive to buy than port officials figured. An increase in steel prices means the line is now worth \$14.4 million, well above the previous estimate of \$9.8 million, said Martin Callery, the port's director of communications.

The higher cost reflects a jump in scrap metal prices, which increased the value of the rails and other trackwork since the Central Oregon and Pacific Railroad closed the line because of safety risks in three tunnels.

The port has a pledge of \$4 million in state transportation grant funding, plus another \$8 million if U.S. Rep. Peter DeFazio, D-Ore., successfully reallocates money Congress had made available to fix a rail bridge across Coos Bay.

But beyond that, Callery said, the port would be borrowing money from the private sector to pay for the purchase.

"We've got a line of credit, and we're developing a repayment plan based on the revenue stream that will be generated from reopening rail service," Callery said.

The federal Surface Transportation Board is expected to decide next month whether to accept the port's application to take over the line. Without it, some coastal businesses have resorted to trucks for shipping, and that's been driving up costs.

The port hopes to eventually improve the line to make it better than it has been in many years. The degradation in some sections of the line limits trains to 10 mph. The port hopes to boost that to 40 mph.

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Rail line in good shape, but may cost port a lot more to buy

By Winston Ross

The Register-Guard

COQUILLE — Contractors working for the Oregon International Port of Coos Bay have finished inspecting four of the tunnels and several of the bridges along the disabled rail line between Coquille and Eugene, and they found that the critical pieces of the line are at least no worse off than they were when the railroad's owner shut it down a year ago.

That's a welcome finding, in light of the recent estimate that the line may be more expensive to buy than officials with the port previously figured.

An increase in steel prices means the line is now worth \$14.4 million, above the previously estimated \$9.8 million, said Martin Callery, the port's director of communications and freight mobility.

The tab reflects an increase in scrap metal prices — which increased the value of the rails and other trackwork — since the Central Oregon and Pacific Railroad halted traffic on the line last September. The stoppage of trains left four major employers on the south coast scrambling to find other avenues to ship their goods to the valley and beyond. And it means the port is likely to find itself in debt if the federal Surface Transportation Board approves its application to take over the line, a decision expected sometime next month.

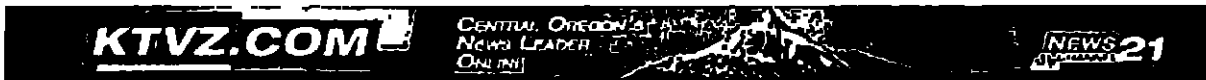
The port has a pledge of \$4 million in state transportation grant funding, plus an expected \$8 million more if U.S. Rep. Peter DeFazio, D-Ore., successfully reallocates some money that Congress made available to fix a rail bridge across Coos Bay. But beyond that, Callery said, the port would be borrowing money from the private sector to fund the purchase of the line.

"We've got a line of credit, and we're developing a repayment plan based on the revenue stream that will be generated from reopening rail service," Callery said.

Once the port owns the line, the question is how much it'll cost to get it up and running again. Eventually, the port wants to put the railroad in better condition than it has been in for many years, allowing trains to travel up to 40 mph on the track. As it is now, trains can run no faster than 10 mph on sections of the line, thanks to a degradation of conditions in certain places.

A complete overhaul will cost between \$20 million and \$50 million, Callery said, but an exact figure is a long way off.

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Abandoned Ore. rail line getting pricier

Associated Press - September 23, 2008 9:45 AM ET

COOS BAY, Ore. (AP) - The International Port of Coos Bay has some encouraging news in its effort to take over a rail line that runs from Coos Bay to Eugene.

Inspectors say critical pieces of the 111-mile rail line are in no worse shape than they were a year ago

Last September, the railroad's owner halted traffic because of safety concerns

But port spokesman Martin Callery says an increase in steel prices means the 111-mile line is now worth \$14.4 million. Previous estimates placed costs at \$9.8 million.

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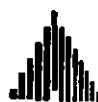
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Exhibit 3
Page 3

EXHIBIT 4

The Appraisal of Real Estate

Twelfth Edition



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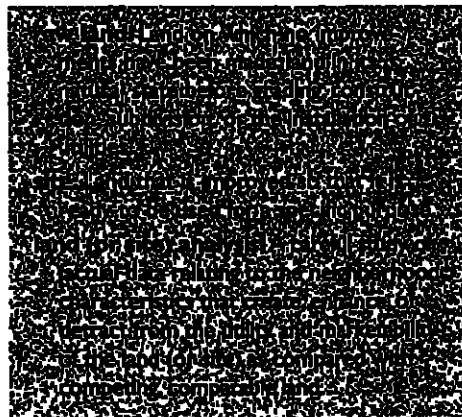
LAND OR SITE ANALYSIS

Appraisal assignments may be undertaken to develop an opinion of the value of land only or the value of both land and improvements. In either case the appraiser must provide a detailed description and analysis of the land. Land can be raw or improved; raw land can be undeveloped or put to an agricultural use. Land may be located in rural, suburban, or urban areas and may have the potential to be developed for residential, commercial, industrial, agricultural, or special-purpose use.

This chapter focuses on the description and analysis of the land component of real property. Because appraisers typically deal with land that has been improved to some degree, the term *site* is used except when raw land is specified. The information needed to complete a full site description and analysis is noted and explained, and sources for obtaining this information are presented. Although this discussion relates primarily to the property being appraised, the same type of data is collected and examined in analyzing the comparable properties used in the appraisal.

A parcel of land can have various site improvements that enable the vacant parcel to support a specific purpose. Land can have both on-site and off-site improvements that make it suitable for its intended use or development. Off-site improvements may include water, drainage, and sewer systems, utility lines, and access to roads. On-site improvements may include landscaping, site grading, access driveways, drainage improvements, accessory buildings, and support facilities.

In valuing any type of property, the appraiser must describe and analyze the land. Land description consists of comprehensive factual data, information on land use restrictions, a legal description, other title and record data, and information on pertinent physical characteristics. Land analysis goes further. The analysis is a careful study of factual data in relation to the neighborhood characteristics that create, enhance, or detract from the utility and marketability of specific land or a given site as compared with other land with which it competes.



A **land (or site) description** is a complete listing of data, including a legal description, other data, and facts, and information on the physical characteristics of the land.

One primary objective of land analysis is to gather data that will indicate the highest and best use of the land as though vacant (or the site as though vacant) so that land value for a specific use can be estimated. (See Chapter 12 for a complete discussion of highest and best

use.) Whether a site or raw land is being valued, the appraiser must determine and evaluate its highest and best use. When the highest and best use of land is for agriculture, the appraiser usually analyzes and values the land by applying the sales comparison approach. If the land is to be developed for urban use, the appraiser may use a more sophisticated technique such as subdivision development analysis.

Legal Descriptions of Land

Land boundaries differentiate separate ownerships, and the land within one set of boundaries may be referred to as a *parcel*, *lot*, *plot*, or *tract*. These terms may be applied to all types of improved and unimproved land, and they are often used interchangeably by market participants. The appraiser, however, should use the terms consistently to avoid confusing the client in the appraisal report.

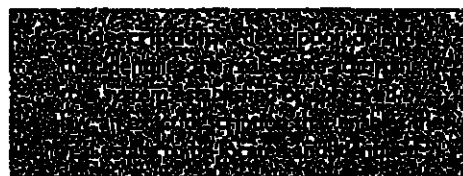
A parcel of land generally refers to a piece of land that may be identified by a common description and is held in one ownership. Every parcel of real estate is unique. To identify individual parcels, appraisers rely on legal descriptions, surveys, or other descriptive information typically provided by the client or found in public records. A legal description identifies a property in such a way that it cannot be confused with any other property; therefore, a

legal description is usually included or referenced in an appraisal report.

In the United States three methods are commonly used to describe real property legally:

1. The metes and bounds system
2. The rectangular survey system
3. The lot and block system

An appraiser should be familiar with these forms of legal description and know which form or forms are accepted in the area where the appraisal is being conducted.



Metes and Bounds

The oldest known method of surveying land is the metes and bounds system, in which land is measured and identified by describing its boundaries. A metes and bounds description of a parcel of real property describes the property's boundaries in terms of precise reference points.

To follow a metes and bounds description, one starts at the point of beginning (POB), a primary survey reference point that is tied to a benchmark and/or adjoining surveys, and moves along past several intermediate reference points before finally returning to the POB. The return and joining is called *closing* and is necessary to ensure the survey's accuracy.

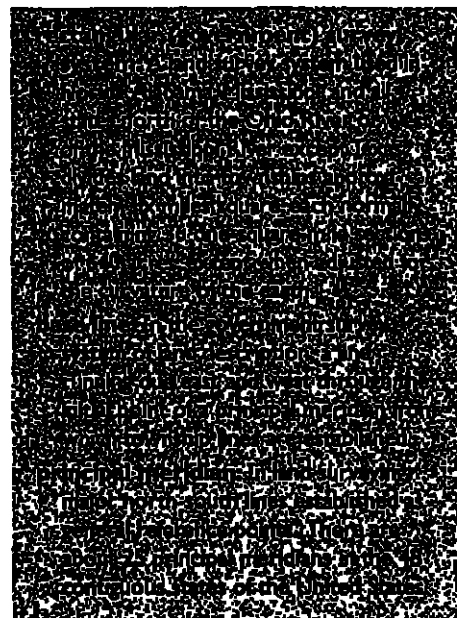
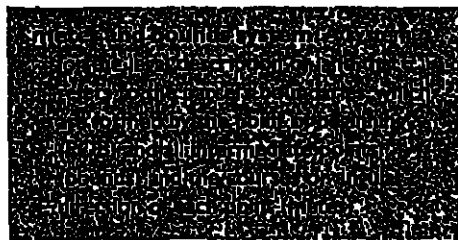
Surveyors in the field increasingly rely on modern "total stations" to collect data in digital form. The familiar surveyor's measuring instrument mounted on a tripod uses infrared technology and today is augmented by portable computer technology. The data is downloaded into the surveyor's office computer for plotting the property boundaries and computing the land area. Coordinate geometry software and Global Positioning System (GPS) technology allow for more accurate determinations of directions, distances, and areas. GPS technology is only limited by physical obstructions that prohibit receiving satellite transmissions, and its use in surveying will probably increase.

The metes and bounds system is the primary method for describing real property in 21 states. It is often used in other states as a corollary to the rectangular survey system, especially in describing unusual or odd-shaped parcels of land.

Rectangular Survey System

The rectangular survey system, which is also known as the *government survey system*, was established by the Land Ordinance of May 20, 1785. The rectangular survey system became the principal method of land description for most land north of the Ohio River and west of the Mississippi River.

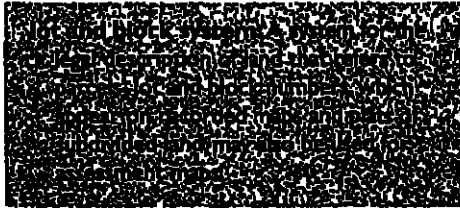
The initial reference points for government surveys were established in the late eighteenth century. From each point specified, true east-west and north-south lines were drawn. The east-west lines are called *base lines* and the north-south lines are called *principal meridians*.



In this system, each parcel of land is identified in terms of its relationship to a single base line and a single principal meridian.

Lot and Block System

The lot and block system was developed as an outgrowth of the rectangular survey system and can be used to simplify the locational descriptions of small parcels. The system was established when land developers subdivided land in the rectangular survey system and assigned lot numbers to individual sites within blocks. The maps of these subdivisions were then filed with the local government to establish a public record of their locations. Each block was identified precisely using a ground survey or established monuments.



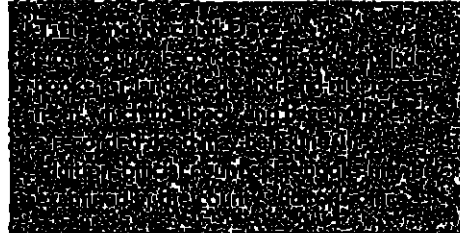
Applying the lot and block system to old, unsurveyed communities helped to identify each owner's site or parcel of land. Typically a surveyor located the boundaries of streets on the ground and drew maps outlining the blocks. Then lot lines were established by agreement among property owners. A precise, measured description was established for each lot and each was given a number or letter that could be referred to in routine transactions. This information was recorded in public records and was known as a *recorded plat of the defined area or subdivision*.

Title and Record Data

Before making an on-site inspection, an appraiser should obtain an appropriate description and other property data from the client or from published sources and public documents. Most jurisdictions have a public office or depository for deeds where transactions are documented and made public. The accessibility of public records, which is legally known as *constructive notice*, ensures that interested individuals are able to research and, if necessary, contest deed transfers.

Sometimes public records do not contain all relevant information about a particular property. Although official documents are dependable sources of information, they may be incomplete or not suited to the appraiser's purposes. Useful support data can be found in land registration systems, land data banks, and assessors' maps.

WHERE TO FIND



Ownership Information

If a partial interest in a property is to be appraised rather than the fee simple interest, the elements of title that are to be excluded should be indicated and

carefully analyzed. An appraiser who is asked to develop an opinion of the value of a fractional ownership interest must understand the exact type of legal ownership to define the property rights to be appraised.

After defining the property rights being appraised, the appraiser must identify any excluded rights that may affect value. In addition USPAP requires appraisers to analyze and report any prior sales occurring within a specified number of years.¹ The appraiser should also investigate the ownership of surface and subsurface rights through a title report, an abstract of title, or other documentary evidence of the property rights to be appraised. Title data indicates easements and restrictions, which may limit the use of the property, as well as special rights such as air rights, water rights, mineral rights, obligations for lateral support, and easements for common walls. Typically the appraiser is not an expert in title information but must rely on legal opinions, title research reports, and title data provided by other professionals. Easements, rights of way, and private and public restrictions affect property value.

Easements may provide for overhead and underground electrical transmission lines, underground sewers or tunnels, flowage, aviation routes, roads, walkways, and open space. Some easements or rights of way acquired by utility companies or public agencies may not have been used for many years, and the appraiser's physical inspection of the property may not disclose any evidence of such use. In certain jurisdictions, easements that are not used for a finite period of time may be automatically terminated. Use of a property for access without the owner's written permission may give the user a prescriptive easement across the property. This type of easement usually must be used for several years without being contested or challenged by the property owner. Title insurance companies often overlook this easement unless it has been perfected in court. Nevertheless, the appraiser should search diligently for information pertaining to any limitations on ownership rights.

Restrictions cited in the deed may limit the type of building or business that may be conducted on the property. A typical example is a restriction that prohibits the sale of liquor or gasoline in a certain place. Often a title report will not specify the details of private restrictions; a copy of the deed or other conveyance must be obtained to identify the limitations imposed on the property. Appraisers often include a limiting condition in their appraisal reports regarding easement or private restrictions that have not been recorded in public records.

WHERE TO FIND

Ownership information
Appraiser's jurisdiction and type of ownership can be used to determine public records maintained by the clerk and recorder. Local title companies may also provide this information.

1. See Standards Rule 1-5 of the current edition of the Uniform Standards of Professional Appraisal Practice. Other standards such as the Uniform Appraisal Standard for Federal Land Acquisitions also apply in the federal jurisdiction.

Zoning and Land Use Information

Land use and development are usually regulated by city or county government, but they are often subject to regional, state, and federal controls as well. In analyzing zoning and building codes, an appraiser considers all current regulations and the likelihood of a change in the code. Usually a zone calls for a general use (such as residential, commercial, or industrial) and then specifies a type or density of use. Zoning and other land use regulations often control the following:

- Height and size of buildings
- Lot coverage (density) or floor area ratio (FAR)
- Required landscaping or open space
- Number of units allowed
- Parking requirements
- Sign requirements
- Building setbacks
- Plan lines for future street widenings
- Other factors of importance to the highest and best use of the site

Most zoning ordinances identify and define the uses to which a property may be put without reservation or recourse to legal intervention. This is also referred to as a *use by right*. They also describe the process for obtaining nonconforming use permits, variances, and zoning changes, if permitted. In areas subject to floods, earthquakes, and other natural hazards, special zoning and building regulations may impose restrictions on construction. In coastal and historic districts, zoning restrictions may govern building location and design.

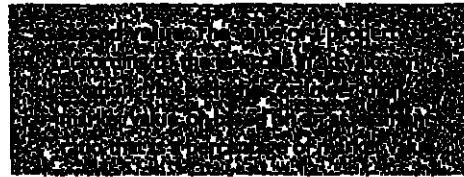
Potential changes in government regulations must also be considered. If, for example, a building moratorium or cessation of land use applications is in effect for a stated period, a property's prospective highest and best use may have to be delayed. The appropriateness of current zoning and the reasonable probability of a zoning change must be considered. Highest and best use

recommendations may rely on the probability of a zoning change. One of the criteria for the highest and best use conclusion is that the use must be legally permissible. If the highest and best use of a site is predicated on a zoning change, the appraiser must investigate the probability that such a change will occur. The appraiser may interview planning and zoning staff and study patterns of zoning change to assess the likelihood of a change. The appraiser can generally eliminate those uses that are clearly not

WHERE TO END



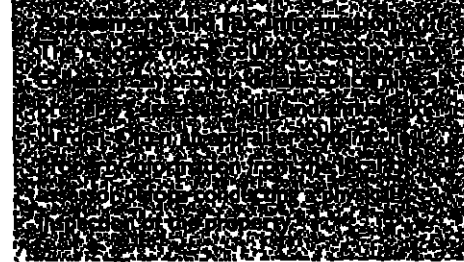
compatible with existing uses in the area as well as uses that have previously been denied. After reviewing available public and private land use information, the appraiser may also prepare a forecast of land development for the area. If the zoning of the subject site is not compatible with the probable forecast uses, the likelihood of a change in the zoning is especially high and speculative. The appraiser should recognize, however, that a zoning change is never 100% certain and should alert the client to that fact if it is relevant to the purpose of the appraisal.



Assessment and Tax Information

Real property taxes in all jurisdictions are based on ad valorem assessments. Taxation levels are significant in considering a property's potential uses. From the present assessment, the current tax rate, and a review of previous tax rates, the appraiser can form a conclusion about future trends in property taxation. Assessed values may not be good indicators of the market value of individual properties because mass appraisals based on statistical methodology tend to equalize the application of taxes to achieve parity among assessment levels in a given district. Nevertheless, in some areas and for some property types, assessed value may approximate market value. The reliability of local assessments as indicators of market value varies from district to district.

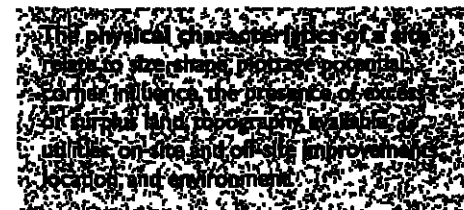
Where to Find



Physical Characteristics of Land

In site description and analysis, an appraiser describes and interprets how the physical characteristics of the site influence value and how the physical improvements relate to the land and to neighboring properties. Important physical characteristics include

- Site size and shape
- Corner influence
- Plottage
- Excess land and surplus land
- Topography
- Utilities
- Site improvements
- Accessibility
- Environment



Size and Shape

A size and shape description states a site's dimensions (street frontage, width, and depth) and sets forth any advantages or disadvantages caused by these physical characteristics. The appraiser describes the site and analyzes how its size and shape affect property value. Special attention is given to any characteristics that are unusual for the neighborhood. The effects of the size and shape of a property vary with its probable use. For example, an odd-shaped parcel may be appropriate for a dwelling but unacceptable for certain types of commercial or industrial use. A triangular lot may not have the same utility as a rectangular lot due to its size and shape.

Land size is measured and expressed in different units, depending on local custom and land use. Large tracts of land are usually measured in acres. Smaller sites are usually measured in square feet, although acreage may also be used. Dimensions are expressed in feet (and tenths of feet for easy calculation).

Frontage is the measured footage of a site that abuts a street, lake or river, railroad, or other feature recognized by the market. The frontage may or may not be the same as the width of the property because a property may be irregularly shaped or have frontage on more than one side.

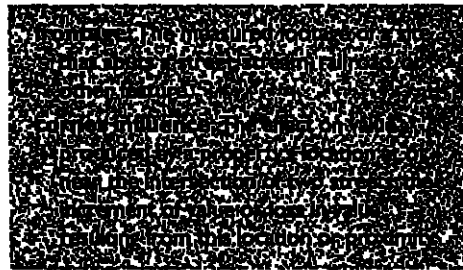
Size differences can affect value and are considered in site analysis. Reducing sale prices to consistent units of comparison facilitates the analysis of comparable sites and can identify trends in market behavior. Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase. The functional utility or desirability of a site often varies depending on the types of uses to be placed on the parcel. Different prospective uses have ideal size and depth characteristics that influence value and highest and best use. An appraiser should recognize this fact when appraising sites of unusual size or shape. Value tendencies can be observed by studying market sales of lots of various sizes and their ability to support specific uses or intensities of development. In residential appraisal, a large triangular lot may not have any greater value because only one dwelling unit may be built on it according to zoning and subdivision regulations. The large undeveloped remainder would be surplus land, which is discussed below.

Corner Influence

Properties with frontage on two or more streets may have a higher or lower unit value than neighboring properties with frontage on only one street. The advantage of easier access to corner sites may be diminished by a loss of privacy or a loss of utility due to setback requirements. An appraiser must determine whether the local market considers a corner location to be favorable or unfavorable. This determination can change depending on the use (or uses) anticipated for the site.

In the layout of building improvements and the subdivision of large plots, corner sites have more flexibility and higher visibility than interior

properties. A store on a corner may have the advantage of direct access from both streets and prominent corner visibility and exposure. Corner exposure may provide advantageous ingress and egress for a drive-in business. For residential properties, corner locations may have negative implications; quiet, cul-de-sac sites in the interior of a subdivision may be more desirable and command higher prices. Residences on corner sites are exposed to more traffic noise and provide less security. Owners of corner sites may pay higher costs for front-footage sidewalks and assessments, and the side street setback may affect the permitted size of the building. Usually owners of residences on corner lots have to maintain a larger landscaped area that may in fact be public property.

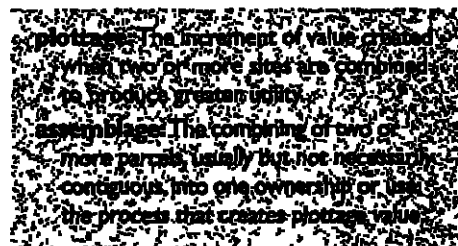


Plottage

Sometimes highest and best use results from assembling two or more parcels of land under one ownership. If the combined parcels have a greater unit value than they did separately, plottage value is created. Plottage is an increment of value that results when two or more sites are combined to produce a larger site with greater utility. For example, there may be great demand for one-acre lots in an industrial park where most of the platted lots are of one-half acre. By itself, a half-acre lot has a value of \$1.00 per square foot. When combined with an adjacent half-acre lot, however, the value may increase to \$1.50 per square foot. The value difference may be offset by the premium a developer often has to pay to combine adjacent properties, or the reverse may occur if the lots are very large and assemblage yields a lower value per square foot in the marketplace due to economies of scale. Plottage value may also apply to an existing site of a special size or shape that has greater utility than more conventional, smaller lots. Neighboring land uses and values are analyzed to determine whether an appraised property has plottage value.

Plottage is significant in appraising agricultural land. Properties of less-than-optimum size have lower unit values because they cannot support the modern equipment needed to produce maximum profits. In an urban area, plottage of commercial office and retail sites and of residential apartment sites may increase the unit values of the lots assembled.

Although the assemblage of land into a size that permits a higher and better use may increase the land's unit value (dollars per square foot or acre), the reverse may also occur. Land that must be divided or



subdivided to achieve a higher and better use is commonly sold in bulk at a price less than the sum of the retail prices of its components. The lower unit price for the bulk sale reflects market allowances for risk, time, management, development and related costs, sales costs, profit, and other considerations associated with dividing and marketing the land.

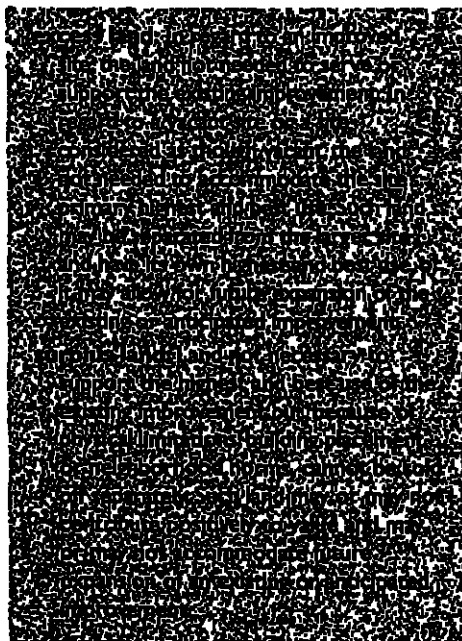
Excess Land and Surplus Land

A given land use has an optimum parcel size, configurations, and land-to-building ratio. Any extra or remaining land not needed to support the specific use may have a different value than the land area needed to support the improvement. The portion of property that represents an optimal site for the existing improvements will reflect a typical land-to-building ratio. Land area needed to support the existing or ideal improvement can be identified and quantified by the appraiser. Any remaining site area is either excess land or surplus land.

Excess land, in regard to an improved site, is land that is not needed to serve or support the existing improvement. In regard to a vacant site or a site considered as though vacant, excess land is not needed to accommodate the site's primary highest and best use. Such land may have its own highest and best use or may allow for future expansion of the existing or anticipated improvement. If the excess land is marketable or has value for a future use, its market value as vacant land is added to the estimated value of the economic entity.

Surplus land is not needed to support the existing improvement and typically cannot be separated from the property and sold off. Surplus land does not have an independent highest and best use and may contribute a minimal value.

As an example, consider a residential property comprising a single-family home and two standard-size lots in a fully developed subdivision. If the house was situated within the boundaries of a single lot and the normal land area for properties in the neighborhood is a single lot, then the second, vacant lot would most likely be considered excess land, which could be separated from the lot of the existing structure for future development to that parcel's highest and best use. If land values in the neighborhood is \$1.00 per square foot, then the excess land in this situation would probably add the full \$1.00 per square foot to the value of the subject property (i.e., the house and the two lots). If the typical land area for properties in



the neighborhood were a double lot, regardless of building placement, then the same property would have neither excess land nor surplus land.

Now consider an industrial park where land-to-building ratios for warehouse properties range from 2.8-to-1 to 3.5-to-1 and land value is \$2.00 per square foot. The subject property is a 20,000-sq.-ft. warehouse on a 100,000-sq.-ft. site, which results in a land-to-building ratio of 5-to-1, well above the market area norm. If the additional land not needed to support the highest and best use of the existing property were in the back portion of the site, lacking access to the street, that land would probably be considered surplus land because it could not be separated from the site and does not have an independent highest and best use. In this situation, the surplus land would probably still contribute positively to the value of the subject property (because the existing improvements could still be expanded onto the surplus land), but it would also most likely be worth much less than the \$2.00 per square foot price commanded by vacant land elsewhere in the industrial park. If an adjacent property owner could expand onto the unused portion of the site of the subject property, that land could then be considered excess land because it could be separated from the existing property and used by the other property owner. In this case, the value of the excess land could be comparable to that of vacant land elsewhere in the industrial park or it may even command a premium if the owner of the adjacent property needs the land to complete an assemblage.

Topography

Topographical studies provide information about land's contour, grading, natural drainage, soil conditions, view, and general physical usefulness. Sites may differ in value due to these physical characteristics. Steep slopes often impede building construction. Natural drainage can be advantageous or, if a site is downstream from other properties or is a natural drainage basin for the area, it may have severely limited use. Adequate drainage systems can offset the topographic and drainage problems that would otherwise inhibit the development of such a site. Upland land area or land with good drainage can typically support more intensive uses.

In describing topography, an appraiser must employ the terminology used in the area. What is described as a steep hill in one part of the country may be considered a moderate slope in another. In some instances, descriptions of a property's topography may be taken from published sources such as topographic maps (see Figure 9.1).



Geodetic Survey Program

Topographic maps prepared under the direction of the U.S. Geological Survey, which are referred to as *quadrangles* or *quads*, provide information that is useful in land descriptions. (See Figure 9.2.) Base lines, principal meridians,

Figure 2.1

Topographic Map



and township lines are shown along with topographic and man-made features. The topographic features commonly depicted on these maps include land elevations (represented by contour lines at specified intervals), rivers, lakes, intermittent streams and other bodies of water, poorly drained areas, and forest. The man-made features identified include improved and unimproved roads, highways, bridges, power transmission lines, levees, railroads, airports, churches, schools, and other buildings. Quadrangle maps also show National Forest and Bureau of Land Management (BLM) boundaries.

Soil Analysis

Surface soil and subsoil conditions are important for both improved properties and agricultural land. A soil's suitability for building or for accommodating a septic system is important for all types of improved property, and it is a major consideration when the construction of large, heavy buildings is being contemplated. The need for special pilings or floating foundations has a major impact on the adaptability of a site for a particular use. Soil conditions affect the cost of development and, therefore, the property value.

Agronomists and soil scientists measure the agricultural qualities of soil and capacity of soil for specific agricultural uses. Engineers trained in soil mechanics test for soil consistency and load-bearing capacity. Subsoil conditions are frequently known to local builders, developers, and others, but if there is any doubt about the soil's bearing capacity, the client should be informed of the need for soil studies. All doubts must be resolved before the land's highest and best use can be successfully analyzed, or a description of any special assumptions must be included in the appraisal report.

Floodplain and Wetlands Analysis

The appraiser should check floodplain maps prepared by local governments and review any available surveys or topographical data provided by the client. Proximity to any flood zones may be determined by studying maps published by the Federal Emergency Management Agency (FEMA). Each map panel is identified by a FEMA number and shows properties within the 100-year

WHERE TO FIND

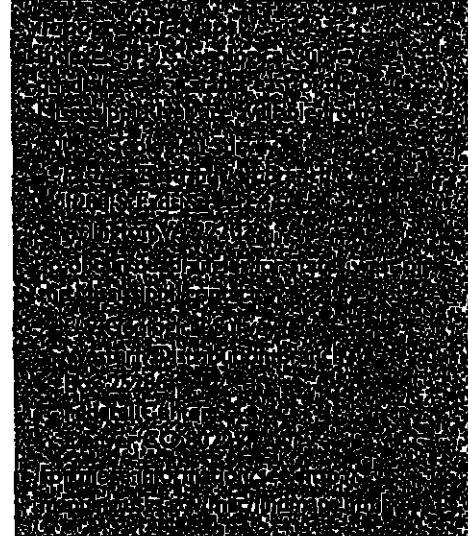
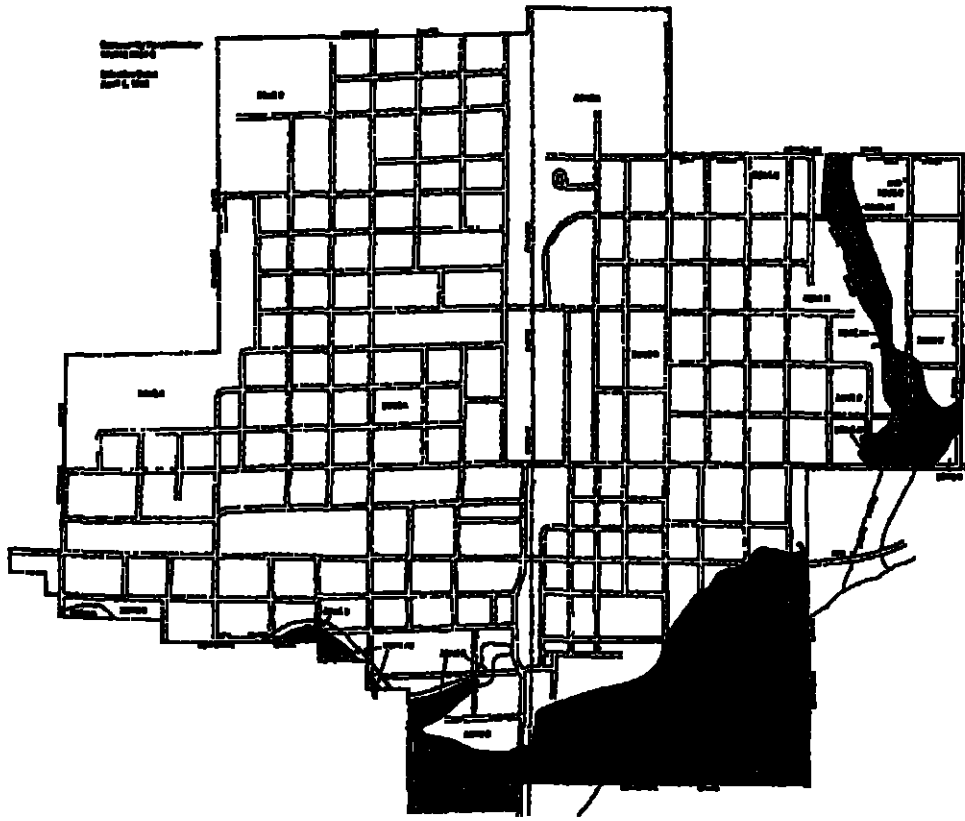


Figure 9.2 U.S. Department of the Interior Geological Survey



Floodplain Map



floodplain, floodways, or other districts (see Figure 9.3). These maps also provide base data for Flood Insurance Rate Maps (FIRMs).

The definition of what constitutes a wetland varies. Most laws describe wetlands in terms of three possible characteristics:

1. Soils
2. Hydrology
3. Vegetation

Section 404 of the Clean Water Act, the major federal environmental legislation regulating activities in wetlands, defines a wetland as land that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Where to Find

Floodplain Maps
 For more information, contact the
 Federal Emergency Management Agency
 Map Service Center
 P.O. Box 1018
 Jessup, MD 20794-1018
 Tel: (800) 358-3217
 Fax: (800) 358-3620
 For more information, see
<http://www.fema.gov/library>

Federal Emergency Management Agency (FEMA): A federal agency established by the Flood Disaster

Protection Act to provide directives on where to build and where not to build in coastal and floodplain areas.

Floodplains: The flat surfaces along the courses of rivers, streams, and other bodies of water that are subject to overflow and flooding.

Wetlands: Areas that are frequently inundated or saturated by surface or groundwater and a lot of vegetation typically adapted for life in saturated soil conditions, generally including swamps, marshes, bogs, and similar areas, but excluding any area in which the water is primarily from surface water. The Clean Water Act defines wetlands as those areas that are inundated or saturated by surface or groundwater as a result of natural conditions, and which support, or are capable of supporting, by their natural conditions, vegetation typically adapted for life in saturated soil conditions.

Swamps, bogs, fens, marshes, and estuaries are subject to varying degrees of influence from local, state, and federal governments. In 2001 the U.S. Supreme Court curtailed the power of the U.S. Army Corps of Engineers (and, by extension, other federal authorities such as the U.S. Environmental Protection Agency) to claim jurisdiction over certain wetlands using the Clean Water Act.² The court ruled that the act does not give the federal government jurisdiction over inland bodies of water that do not flow to the sea, such as landlocked ponds, wetlands, or mud flats, only navigable waterways or marshes that drain into navigable waters. To value wetlands, appraisers must understand the unique features of the land, the evolving laws protecting these areas, the niche market for such properties, and the proper application of the approaches to value.

Utilities

An appraiser investigates all the utilities and services available to a site. Off-site

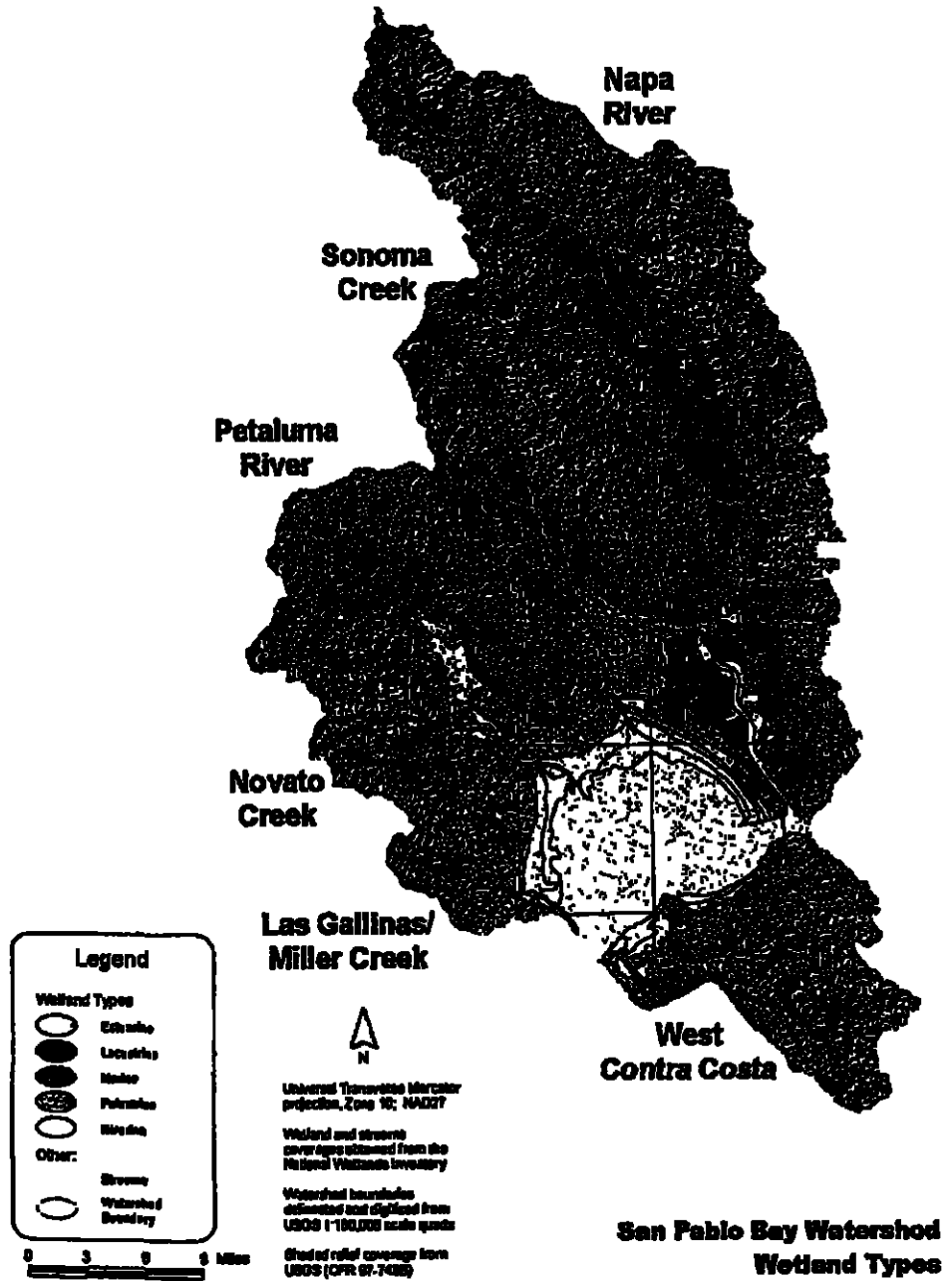
utilities may be publicly or privately operated, or there may be a need for on-site utility systems such as septic tanks and private water wells. The major utilities to be considered are

- Sanitary sewers
- Domestic water (i.e., potable water, for human consumption)
- Types of raw water for commercial, industrial, and agricultural uses
- Natural gas
- Electricity
- Storm drainage
- Telephone service
- Cable television

Although market area analysis describes in general the utility systems that are available in an area, a site analysis should provide a detailed description of the utilities that are available to the appraised site. The location and capacity of the utilities should be determined and any unusually high connection fees should be noted. Atypically high or low service costs should also be

2. *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 1 (2001).

Wetlands Map



WHERE TO FIND

Public utility information can be obtained from the following sources:

- Public utility companies
- Public utility commissions
- Public utility departments
- Public utility districts
- Public utility districts

Public utility information can be obtained from the following sources:

- Public utility companies
- Public utility commissions
- Public utility departments
- Public utility districts
- Public utility districts

identified and analyzed. It is not sufficient simply to establish which utilities are available. Any limitations resulting from a lack of utilities are important in highest and best use analysis, and all available, alternative sources of utility service should be investigated.

The rates for utility service and the burden of any bonded indebtedness or other special utility costs should also be considered. Of particular concern to residential, commercial, and industrial users are

- Quality and quantity of water and its cost
- Costs and dependability of energy sources
- Adequacy of sewer facilities
- Any special utility costs or surcharges that might apply to certain businesses
- Impact of special improvement districts (SIDs) on tax rate and repayment methods (special assessment, etc.)

Site Improvements

In a site description an appraiser describes off-site, as well as on-site, improvements that make the site ready for its intended use or development. Then the appraiser analyzes how the site improvements affect value. On-site improvements include grading, landscaping, fences, curbs, gutters, paving, drainage and irrigation systems, walks, and other improvements to the land. Off-site improvements include access roads, utility hookups, remote water retention ponds, and sewer and drainage lines. The value of off-site improvements is typically considered with site value.

The location of existing buildings on a site must also be described and analyzed. Many appraisers make approximate plot plan drawings that show the placement of major buildings in relation to lot lines, access points, and parking or driveway areas. Land-to-building ratios and overall site configuration are usually quite important to a site's appeal and ability to support specific uses. The space allotted for parking influences a site's value for business and commercial use, so the parking space-to-building ratio in a commercial and industrial property must be analyzed. Zoning codes or planned unit developments (PUDs) will specify the minimum number of spaces required.

The appraiser considers any on-site improvements that add to or detract from a property's optimal use or highest and best use. For example, a lot

zoned for multifamily use may be improved with an 18-unit apartment building that is too valuable to demolish. If the site as vacant could accommodate a 24-unit building but the location of the present structure blocks the ability to add additional units, the appraiser may conclude that the site is underimproved and not developed to its highest and best use.

Accessibility

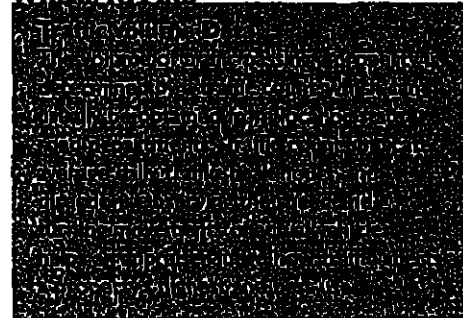
Site analysis focuses on the time-distance relationships between the site and common origins and destinations. An appraiser describes and analyzes all forms of access to and from the property and the neighborhood. In most cases, adequate parking area and the location and condition of streets, alleys, connector roads, freeways, and highways are important to land use. Industrial properties are influenced by rail and freeway access and the proximity of docking facilities. Industrial, commercial, and residential areas are all affected by the location of airports, freeways, public transportation, and railroad service.

Traffic volume may be either advantageous or disadvantageous to a site, depending on other conditions that affect its highest and best use. High-volume local traffic in commercial areas is usually an asset; heavy through traffic may hurt retail stores, except those that serve regional travelers. Heavy traffic within residential areas is usually detrimental for single-family neighborhoods, but high-traffic streets to access a subdivision or development are advantageous.

The noise, dust, and fumes that emanate from a heavily traveled artery or freeway are not desirable for most low-density, residential lots. On the other hand, the advertising value of locations on major arteries can benefit offices and shopping centers, unless congestion restricts the free flow of traffic. The visibility of a commercial property from the street is an advertising asset; this asset is most valuable when the driving customer can easily exit the flow of traffic and enter the property.

Median strips, turning restrictions, one-way streets, and access restrictions can limit the potential uses of a parcel. In site analysis the appraiser should test the probable uses of the site in relation to the flow of traffic. Planned changes in access should be verified with the appropriate authority and considered in the appraisal.

WHERE TO FIND



Environment

Appraisers also analyze land use in light of environmental conditions. Environmental considerations include factors such as

- Local climate
- Availability of adequate and satisfactory water supply
- Pattern of drainage

- Quality of air
- Presence of wildlife/endangered species habitats
- Location of earthquake faults and known slide or avalanche zones
- Proximity to streams, wetlands, rivers, lakes, or oceans

Air and water pollution are by-products of increased population and urbanization. Public concern over pollution has prompted political action and legislation to protect the environment. In areas subject to extreme air pollution, regulations may exclude certain industries and limit the volume of traffic; such restrictions impact land use in these jurisdictions. Pollution rights have also become a salable commodity.³ In locations near natural water sources, industrial uses may be prohibited while recreational uses are promoted. Environmental and climatic advantages and constraints must be analyzed to determine the proper land use for a site. Future land uses must be compatible with the local environment.

A site in a specific location may be influenced by its exposure to sun, wind, or other environmental factors. A very windy location can be disastrous to a resort but beneficial to a fossil-fuel power plant. The sunny side of the street is not always the most desirable for retail shops. In hot climates, the shady side of the street often gets more pedestrian traffic and greater sales, thus producing higher rents and higher land values. Ski resorts almost always have slopes facing north for snow retention, and buildings facing south are desirable.

Analysis of a site's environment focuses on the interrelationships between the appraised site and neighboring properties. The effects of any hazards or nuisances caused by neighboring properties must be considered. Of particular importance are safety concerns—e.g., the safety of employees and customers, of occupants and visitors, or of children going to and from school.

A site's value is also influenced by nearby amenities and developments on adjoining sites such as parks, fine buildings, and compatible commercial buildings. The types of structures surrounding the property being appraised and the activities of those who use them can greatly influence site value.

Environmental Liabilities

In recent years the federal government has issued many environmental laws and regulations; state and local governments have added even more. This vast network of regulations defines the natural and man-made conditions that constitute environmental liabilities affecting property values. Natural areas to be protected include wetlands, aquifer replenishment areas, and habitats for endangered or threatened species. Man-made liabilities may be indicated by

3. The Clean Air Act of 1990 regulated the tonnage of acid-rain emissions that smokestack industries may release in proportion to plant size. Industries that do not use their full legal allowance can transfer or sell their pollution rights to other industries. Since 1993 pollution rights have been sold on both the Chicago Board of Trade and in the off-exchange pollution-rights market.

the presence of leaking underground storage tanks (LUSTs), asbestos, PCBs, or other hazardous materials. The existence of one or more environmental conditions can reduce the value of a property or even create a negative value.

The typical appraiser may not have the knowledge or experience needed to detect the presence of hazardous substances or to measure their quantities. Like buyers and sellers in the open market, the appraiser must often rely on the advice of others. Appraisers are not expected or required to be experts in the detection or measurement of hazardous substances. The role and responsibility of the appraiser in detecting, measuring, and considering environmental substances affecting a property are addressed in Advisory Opinion 9 of USPAP and Guide Note 8 of the Appraisal Institute's Guide Notes to the Standards of Professional Appraisal Practice (see Figure 9.5).

The Property Observation Checklist (Figure 9.6), developed and adopted by the Appraisal Institute in 1995, is consistent with Advisory Opinion 9 and Guide Note 8. The checklist provides appraisers conducting property inspections with a uniform, easy-to-use guideline for recording observations about the presence of possible environmental factors. To the extent possible, voluntary use of the checklist limits the appraiser's liability. (Note: the checklist was not developed for single-family residential or agricultural properties.)

Even if there is no reason to believe that the property being appraised is affected by hazardous substances, appraisers are advised to include a standard disclaimer or statement of limiting conditions concerning hazardous substances

Figure 9.5 Consideration of Hazardous Substances in the Appraisal Process

Advisory Opinion 9, which was adopted December 8, 1992, addresses the following areas of concern:

- An appraiser who is requested to complete a checklist as part of a process to detect contamination should only respond to those questions that can be answered competently by the appraiser within the limits of his or her particular expertise.
- An appraiser may reasonably rely on the findings and opinions of qualified specialists in environmental remediation and compliance cost estimation.
- An appraiser may appraise an interest in real estate that is or is believed to be contaminated based on the hypothesis that the real estate is free of contamination when 1) the resulting appraisal is not misleading, 2) the client has been advised of the limitation, and 3) the Ethics Rule of USPAP is satisfied.
- The value of an interest in impacted or contaminated real estate may not be measurable by simply deducting the remediation or compliance cost estimate from the estimated value as if unaffected.

Guide Note 8 was adopted January 1, 1991, and amended January 25, 1994. This guide note takes its direction from the Competency Rule of USPAP, which requires appraisers to either

- have the knowledge and experience necessary to complete a specific appraisal assignment competently
- or
- disclose their lack of knowledge or experience to the client, take all steps necessary or appropriate to complete the assignment competently, and describe in the report their lack of knowledge or experience and the steps taken to competently complete the assignment

Property Observation Checklist Form



PROPERTY OBSERVATION CHECKLIST

SCOPE OF ANALYSIS

The Property Observation Checklist is prepared by the appraiser in conjunction with his/her inspection of the subject property in the normal course of an appraisal assignment. In completing the checklist, only visual observations are recorded. The intent of the checklist is to help identify possible environmental factors that could be observable by a non-environmental professional. The appraiser did not search title, interview the current or prior owners, or do any research beyond that normally associated with the appraisal process, unless otherwise stated.

The user of this checklist is reminded that all responses to the questions are provided by an appraiser who is not an environmental professional and is not specifically trained or qualified to identify potential environmental problems; therefore, it should be used only to assist the appraiser's client in determining whether an environmental professional is required. The checklist was not developed for use with single-family residential or agricultural properties.

The appraiser is not liable for the lack of detection or identification of possible environmental factors. The appraisal report and/or the Property Observation Checklist must not be considered under any circumstances to be an environmental site assessment of the property as would be performed by an environmental professional.

GENERAL INSTRUCTIONS

The appraiser should distinguish, as appropriate, between the physical presence of possible environmental factors and the economic effect such factors may have in the marketplace or on the value estimate. In completing the checklist, the appraiser should attach reports, photographs, interview records, notes, public records, etc., as documentation for specific observations. The instructions for each section of the checklist specify the kinds of documentation required.

If, for any reason, this checklist is prepared as a stand-alone document, it must be accompanied by an appropriate statement of assumptions and limiting conditions, as well as the appraiser's signed certification.

TERMINOLOGY AND APPRAISAL STANDARDS

The following checklist terms appear in *The Dictionary of Real Estate Appraisal*, Third Edition (Chicago: Appraisal Institute, 1993) and are specifically referenced in the Property Observation Checklist: *adjoining properties*, *environmental professional*, *environmental site assessment*, and *plc, pond, or lagoon*. Please refer to *The Dictionary of Real Estate Appraisal*, Third Edition, for discussions of these terms.

Please refer to Guide Note 8, "The Consideration of Hazardous Substances in the Appraisal Process," *Guide Notes to the Standards of Professional Appraisal Practice* (Chicago: Appraisal Institute, current edition); Advisory Opinion G-9, "Responsibility of Appraisers Concerning Toxic or Hazardous Substances Contamination," in *Addenda to Uniform Standards of Professional Appraisal Practice* (Washington, D.C.: The Appraisal Foundation, current edition); and other appropriate statements in the professional standards documents for additional information.

Property Observation Checklist Form (continued)

SECTION 1 Extent of Appraiser's Inspection of the Property

Describe the appraiser's on-site inspection of the subject property and, as applicable, the adjoining properties:

SECTION 2 Possible Environmental Factors Observed by the Appraiser

Indicate below if any of the following possible environmental factors were observed during the appraiser's visual inspection(s) of the subject property and, as applicable, the adjoining properties. A written description of possible environmental factors should be provided for all questions where "Yes" is checked.

1. Did the appraiser observe an indication of current or past industrial/manufacturing use on the subject property or adjoining properties?

☐ Yes ☐ No If observed, describe below:

2. Did the appraiser observe any containers, storage drums, or disposal devices not labeled or identified as to contents or use on the subject property?

☐ Yes ☐ No If observed, describe below:

3. Did the appraiser observe any stained soil or distressed vegetation on the subject property?

☐ Yes ☐ No If observed, describe below:

4. Did the appraiser observe any pits, ponds, or lagoons on the subject property?

☐ Yes ☐ No If observed, describe below:

5. Did the appraiser observe any evidence of above-ground or underground storage tanks (e.g., tanks, vent pipes, etc.) on the subject property?

☐ Yes ☐ No If observed, describe below:

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Property Observation Checklist Form (continued)

6. Did the appraiser observe any flooring, drapes, or walls associated with the subject property that are stained or that emit unusual odors?

☐ Yes ☐ No If observed, describe below:

7. Did the appraiser observe any water being discharged on or from the subject property?

☐ Yes ☐ No If observed, describe below:

8. Did the appraiser observe any indication of dumping, burying, or burning on the subject property?

☐ Yes ☐ No If observed, describe below:

9. Did the appraiser observe any chipped, blistered, or pealed paint on the subject property?

☐ Yes ☐ No If observed, describe below:

10. Did the appraiser observe any sprayed-on insulation, pipe wrapping, duct wrapping, etc., on the subject property?

☐ Yes ☐ No If observed, describe below:

11. Did the appraiser observe any transmission towers (electrical, microwave, etc.) on the subject property or adjoining properties?

☐ Yes ☐ No If observed, describe below:

12. Did the appraiser observe any coastal areas, rivers, streams, springs, lakes, swamps, marshes, or watercourses on the subject property or adjoining properties?

☐ Yes ☐ No If observed, describe below:

13. Did the appraiser observe any other factors that might indicate the need for investigation(s) by an environmental professional?

☐ Yes ☐ No If observed, describe below:

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Property Observation Checklist Form (continued)

SECTION 3 Possible Environmental Factors Reported by Others

Indicate below if in completing this assignment the appraiser was informed—verbally or in writing—of any information concerning possible environmental factors reported by others. "Others" may include the client, the property owner, the property owner's agent, or any other person conveying such information. Documentation should be provided for all instances where "Yes" is checked. If the information was presented verbally, then a written description of the source and circumstances of the communication should be attached to this checklist and/or the appraisal report. Copies of printed reports provided to the appraiser should be attached to this checklist and/or the appraisal report.

14. Has the appraiser been informed about federal- or state-maintained records indicating that environmentally sensitive sites are located on the subject property or adjoining properties?
☐ Yes ☐ No If yes, provide documentation.
15. Has the appraiser been informed about past or current violations (e.g., laws, government notifications, etc.) of environmental laws concerning the subject property?
☐ Yes ☐ No If yes, provide documentation.
16. Has the appraiser been informed about past or current environmental lawsuits or administrative proceedings concerning the subject property?
☐ Yes ☐ No If yes, provide documentation.
17. Has the appraiser been informed about past or current tests for lead-based paint or other lead hazards on the subject property?
☐ Yes ☐ No If yes, provide documentation.
18. Has the appraiser been informed about past or current tests for asbestos-containing materials on the subject property?
☐ Yes ☐ No If yes, provide documentation.
19. Has the appraiser been informed about past or current tests for radon on the subject property?
☐ Yes ☐ No If yes, provide documentation.
20. Has the appraiser been informed about past or current tests for soil or groundwater contamination on the subject property?
☐ Yes ☐ No If yes, provide documentation.
21. Has the appraiser been informed about other professional environmental site assessment(s) of the subject property?
☐ Yes ☐ No If yes, provide documentation.

Signature

Name

Date Checked/ Signed

Date Certification or Exam Expires #

State

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Section 9 of USPAP and Guide Note 3 of the Appraisal Institute's Guide Note to the Standards of Professional Appraisal Practice address the responsibility of appraisers in detecting environmental problems. The Property Appraiser's Checklist published by the Appraisal Institute may be useful to inspect for signs of environmental contamination and other environmental factors.

in their appraisal reports. Such a statement clarifies the normal limits of the appraisal, discloses the appraiser's lack of expertise with regard to hazardous substances, and disclaims responsibility for matters beyond the appraiser's experience. (An example of such a disclaimer is provided in Chapter 26.) The determination of due diligence remains at issue, even when a disclaimer is used.

Environmental Site Assessments and Environmental Property Assessments

Because of the existence of environmental liability laws and the significant effect that environmental contamination may have on a given property, appraisers and property owners or purchasers should make reasonable inquiries to determine whether there is a likelihood that a particular property may be affected by either apparent or latent environmental conditions. Today this is as common as testing for termites, hidden structural problems, and other factors that may influence value. Most appraisers and property owners are not trained and qualified to make technical assessments, but reasonable examination and inquiry can produce evidence of conditions that are already known to the market.

In most parts of the country, lenders commonly require a specific environmental study before a loan for an income-producing property is processed. While formal studies are less common for single-family residential properties, lenders and secondary markets officials may require studies in Superfund areas and other areas known to have possible environmental contamination to ensure that the condition does not adversely affect the property for which a loan is proposed (see Figure 9.7).

Most environmental site assessments (ESAs) or environmental property assessments (EPAs) required for real estate transactions are conducted by environmental consultants who are trained to investigate a broad range of environmental issues.

An environmental assessment cannot guarantee that a property is totally free of hazardous substances. An investigation does provide limited legal protection for the innocent purchaser, however, and a reasonable margin of assurance that contamination from hydrocarbons, asbestos, PCBs, or other hazardous substances is unlikely. To guarantee that a property is completely

free of contaminants, every building component would have to be examined for asbestos and every cubic foot of soil and groundwater to the earth's core would have to be tested. The science of various environmental conditions and the laws relating to liabilities continue to change as



Figure 9-5 Environmental Site Assessments

Many real estate transactions require:

- Phase I**
- Site visit (Interview occupants of the subject and neighboring properties and look for signs of contamination such as stained ground, defoliation, noxious odors, areas of inconsistent surface height or depth, uneven pavement, or the presence of drums or other debris)
 - Examination of aerial photographs
 - Study of records kept by local, state, and federal environmental agencies
 - Review of pertinent regulatory legislation

If a Phase I environmental assessment uncovers evidence of possible contamination or past or present violations of environmental regulations, then:

- Phase II** • Invasive sampling of the soil

If contaminants are present, then:

- Phase III**
- Further invasive sampling of soil to establish the horizontal and vertical extent of soil and groundwater contamination
 - Usually a plan for remediation or mitigation is developed, including a timetable and the estimated costs associated with the environmental cleanup.

See Robert V. Colangelo and Ronald D. Miller, *Environmental Site Assessments and Their Impact on Property Value: The Appraiser's Role* (Chicago: Appraisal Institute, 1995), 218-219 and the workbook for the *Environmental Risk and the Real Estate Appraisal Process* seminar (Chicago: Appraisal Institute, 1994), 78-80.

Note: The American Society for Testing and Materials (ASTM) has developed specific standards for such assessments:

- **Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process (Practice 3 1527-93)**
- **Standard Practice for Environmental Site Assessments: Transaction Screen Process (Practice 1528-93)**

knowledge of and experience with these conditions increase.

Special Characteristics of Rural, Agricultural, or Resource Land

Rural or agricultural resource lands have specific characteristics that appraisers should investigate to describe these properties adequately.

- **Soil.** Precise soil surveys that indicate the soils found on properties, appropriate crops, and expected production are often available (see Figure 9.8). These surveys are useful in comparing agricultural properties.
- **Water rights, drainage, and irrigation.** The legal right to water is as important to the value of a property as the physical source of the water. Although

Environmental Impact Assessment (EIA) is a process that identifies and predicts the potential impacts of a proposed project or activity on the environment. It is a key tool for decision-making in the development and management of land and resources. The process typically involves several steps, including scoping, baseline data collection, impact prediction, impact evaluation, and the preparation of an EIA report. The EIA report provides decision-makers with the information they need to understand the potential impacts of a project and to make informed decisions about whether to approve the project and what conditions should be attached to any approval. EIA is a legal requirement in many countries and is an essential part of sustainable development.

ENVIRONMENTALLY IMPACTED PROPERTIES

Stigma is generally that which negatively impacts the value of a property or properties in a community. In a good way to view stigma in the valuation process is in the application of the formula used to calculate the impaired value; one begins with the unimpaired value and deducts the cost to remediate the site and the impact of stigma. The same phenomenon is present in the analysis of a sale of contaminated property. The property sells to a knowledgeable buyer at a lower price than the element was generally considered in this price.

There are two categories of the cost to remediate:

1. The cost to clean up the contamination (stigma)

2. The cost to clean up the contamination (stigma)

3. The cost to clean up the contamination (stigma)

4. The cost to clean up the contamination (stigma)

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48. The cost to clean up the contamination (stigma)

49. The cost to clean up the contamination (stigma)

50. The cost to clean up the contamination (stigma)

water rights vary greatly throughout the United States, state law, as administered by the state department of natural resources or another government agency, have the greatest influence on access to water. Evidence of water rights may be in the form of a contract with the Water and Power Resources Service (formerly the U.S. Bureau of Reclamation) or a public utility water distributor. Water rights may also be given by an individual state certificate or decree, by shares of stock in an irrigation company, or by location in an organized irrigation district. The long-term dependability and cost of adequate drainage and water supplies should be analyzed. (Evaluating on-site drainage and irrigation may require special expertise.) For an appraisal of irrigated properties, it is always necessary to

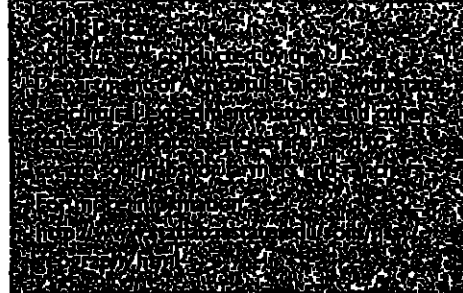
know whether the water rights are appurtenant to the land or transferable separately from the land. If water rights do not transfer with the land, the property's value may decline significantly and its highest and best use may be changed.

- *Climate.* General climatic conditions and growing seasons can affect crop production and, therefore, land value.
- *Potential crops.* The crops grown on a property are related not only to climate, soil, and irrigation, but also to the availability of labor, transportation, and access to the markets that make, transport, and sell the products produced from crops.
- *Environmental controls.* Cropping patterns are influenced by regulations on herbicides, insecticides, fertilizers, air and water pollution, and wildlife protection. Underground storage tanks, asbestos in farm buildings, and cattle vats are common environmental liabilities.
- *Mineral rights.* The presence of precious metals, oil and gas, sand and gravel, quarry red rock such as building stone, clay deposits, or gemstones on a plot of land can affect its value; as with water rights, the legal right to extract all minerals contained in or below the surface of a property is

Figure 3-8 Soil Map



WHERE TO FIND



as important as ownership of the land itself. Mineral rights may be granted with surface rights or without surface entry because the *mineral estate* is the dominant tenant in most states.

Various lease and ownership relationships may be in effect and should be investigated.

- *Unapparent environmental hazards.* Although the environmental liabilities associated with industrial

plants are well known, many of the same liabilities may be present in other properties. One cannot assume that green rural properties that appear clean are actually free of environmental liabilities. In the 1940s and 1950s, farmers commonly used cattle vats—i.e., trenches filled with fuel oil through which cattle were led to rid them of mites and small insects. The fuel oil was often treated with DDT and other pesticides. When this practice fell into disuse, the trenches were simply filled in. Farms often have aging underground storage tanks that held gasoline used to fuel farm vehicles. Farmland may also be contaminated by the accumulation of fertilizers and pesticides. Old railroad beds can constitute an environmental hazard because railroad ties were commonly soaked in creosote-filled trenches dug on site when tracks were laid. Timberlands are not free of contaminants either. Old turpentine stills are often found in areas where forests were once harvested.

- *Other considerations.* The location of wildlife habitats, the distances from populated areas, and the potential for recreational land uses are among the many other considerations to be analyzed in appraising agricultural land. Special tax provisions, such as reduced taxes on agricultural or resource properties, should also be studied.⁴

4. For a thorough discussion of the methods used to describe and analyze the significant characteristics of land used for agricultural production, see American Society of Farm Managers and Appraisal Institute, *The Appraisal of Rural Property*, 2d ed. (Denver and Chicago, 2000).

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

2. Once the problem is identified, the next step is to define the objectives and goals of the project. This helps to clarify what needs to be achieved and provides a clear direction for the team.

3. The third step is to develop a plan or strategy to address the problem. This involves breaking down the problem into smaller, manageable tasks and determining the resources needed to complete them.

4. The fourth step is to implement the plan. This involves putting the strategy into action and monitoring progress regularly to ensure that the project is on track.

5. Finally, the fifth step is to evaluate the results of the project. This involves assessing the outcomes against the objectives and goals to determine the effectiveness of the intervention.

EXHIBIT 5

PTCO 179678/10-66737

Division of Chief Deputy Clerk
Lane County Deeds and Records

2002-035324

10-
11-
20A) Tax Statements To:

Swanson Bros. Lumber Co., Inc.
P.O. Box 309
Noti, Oregon 97461



\$71.00

00291318200200353240060069 05/06/2002 03:48:56 PM
RPR-DEED Cnt=1 Stn=5 CASHIER 01
\$30.00 \$20.00 \$11.00 \$10.00

QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That Central Oregon & Pacific Railroad, Inc., a(n) Delaware, hereinafter called "Grantor," for the consideration hereinafter stated, does hereby release and quitclaim unto Swanson Bros. Lumber Co., Inc., an Oregon corporation, with an address of P.O. Box 309, Noti, Oregon 97461, hereinafter called "Grantee," all of that certain real property situated in Noti, County of Lane, State of Oregon, as more particularly described in the Exhibit "A" attached and hereby made a part hereof, (the "Premises"), subject to all covenants, leases, licenses, conditions, restrictions, exceptions, easements, rights-of-way, rights-of-access, agreements, reservations, encumbrances, liens and other matters whether of record or not; any matters which would be disclosed by survey, investigation or inquiry; and any tax, assessment or other governmental lien against the Premises.

AND, MORE SPECIFICALLY SUBJECT TO those exceptions and reservations contained in that certain deed dated December 31, 1994 from Southern Pacific Transportation Company to the Grantor which was recorded in the land records of Lane County as Document No 95000176, on January 3, 1995.

RESERVING unto Grantor, and its lessees, licensees, designees, successors, and assigns, the ownership of all existing signal and communications equipment, crossing warning and protection devices, and other railroad-related facilities located above, below and upon the Premises (hereinafter the "Equipment"), along with an exclusive easement for the operation, use, maintenance, relocation, repair, removal, and all additional actions related to the existence of the Equipment.

AND FURTHER RESERVING unto Grantor, and its lessees, licensees, designees, successors, and assigns, a perpetual, exclusive easement over, under, above, and across that certain property which is described as follows.

Beginning at the Southwest corner of Section 29, Township 17 South, Range 6 West of the Willamette Meridian, thence N89°47'07"E, along the South line of said Section 29, a distance of 1390.10 feet to a 3/4" iron pipe on the East line of Sailor Road; thence N00°24'38"W, along the East line of Sailor Road, a distance of 145.87 to the true point of beginning; thence N89°40'49"E, 150.00 feet; thence N00°24'38"W, 19.31 feet; thence along the arc of a 2839.93 foot radius curve to the left (the long chord of which bears N89°55'38"W, 100.92 feet), a distance of 100.92 feet to a 5/8" iron rod; thence S89°40'49"W, 49.09 feet to a 5/8" iron rod on the East line of Sailor Road; thence S00°24'38"E, 20.00 feet to the true point of beginning.

After Recording Return To
Western Pioneer Title Co.
PO Box 10146
Eugene, OR 97440

for any and all railroad purposes including, but not limited to, the laying of railroad track, the operation of trains, the storage of railroad equipment, accessing other adjacent railroad property, and other uses related to railroad operations.

TO HAVE AND TO HOLD the same unto Grantee and Grantee's heirs, successors and assigns forever.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES. [ORS 93.040(1)]

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITTING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930. IN ALL ZONES BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

Grantee, by the acceptance hereof, acknowledges that Grantor is operating (and will continue to operate) a railroad upon its adjoining property, and recognizes that such operation may create some noises and vibrations affecting the Premises. Grantee accepts the Premises subject to such noises and vibrations, and hereby covenants to release Grantor from all liability, cost and expense resulting therefrom.

Grantee, by the acceptance hereof, hereby covenants that it, its successors, heirs, legal representatives or assigns, shall maintain the existing drainage on the Premises in such a manner as to not impair adjacent railroad right-of-way drainage and to not redirect or increase the quantity or velocity of surface water runoff or any streams into said Grantor's drainage system or upon the right-of-way or other lands and facilities of Grantor. If said Premises or existing drainage are modified or improved, Grantee agrees to construct and maintain, in accordance with all applicable statutes, ordinances, building and subdivision codes, covenants and restrictions, an adequate drainage system from the Premises to the nearest public or non-Grantor owned drainage or storm sewer system, in order to prevent the discharge of roof, surface, stream and other drainage waters upon said right-of-way or upon other adjacent lands and facilities of Grantor.

Grantee, by the acceptance hereof, hereby covenants and agrees with Grantor that Grantor shall not be required to erect or maintain any fences, railings or guard rails along any boundary lines between the Premises and the adjacent land(s) of Grantor or of any other company affiliated with Grantor; or be liable for or required to pay any part of the cost or expense of erecting or maintaining such fences, railings or guard rails, or any part hereof; or be liable for any damage, loss or injury that may result by reason of the non-existence or the condition of any fences, railings or guard rails or the absence thereof. Grantee covenants and agrees that it shall erect and forever maintain a fence along the trackside boundary of the Premises, said fence or barricade to be subject to the approval of Grantor's General Manager.

Grantee, by the acceptance hereof, expressly acknowledges that Grantee is buying the Premises in an "AS IS" condition and that Grantee has relied upon its own independent investigation of the physical condition of the Premises. Grantee hereby releases Grantor and Grantor's shareholders, officers, directors, agents and employees from all responsibility and liability regarding the condition (including, but not limited to, the physical condition or presence of hazardous materials), valuation or utility of the Premises.

The above covenants shall run with the title to the Premises conveyed, and bind upon the Grantee, Grantee's heirs, legal representatives and assigns, or corporate successors and assigns, and anyone claiming title to or holding Premises through Grantee.

The true and actual consideration paid for the transfer, stated in terms of dollars, is \$120,000.00. (ORS 93.030)

In construing this Deed and where the context so requires, the singular includes the plural, and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and individuals.

IN WITNESS WHEREOF, the Grantor has executed this instrument this 26th day of April, 2002; if a corporate Grantor, it has caused its name to be signed and its seal affixed by its officers duly authorized thereto by order of its Board of Directors.

GRANTOR: Central Oregon & Pacific Railroad, Inc.

By: 

Todd N. Cecil

Title: Vice President - Real Estate

STATE OF TEXAS)

) ss.

COUNTY OF BEXAR)

On this 26th day of April, in the year 2002, before me, Dorothy Nicholson, a Notary Public in and for the County of Bexar, State of Texas, personally appeared Todd N. Cecil, known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) who executed the within instrument as Vice President-Real Estate, for and on behalf of Central Oregon & Pacific Railroad, Inc., therein named and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.



Dorothy Nicholson
Notary Public

My Commission Expires: 3/2/2006

EXHIBIT "A"

PARCEL I

Beginning at the Southwest corner of Section 29, Township 17 South, Range 6 West of the Willamette Meridian; thence N89°47'07"E, along the South line of said Section 29, a distance of 1330.10 feet to a 3/4" iron pipe on the West line of Sailor Road; thence N00°24'38"W, along the West line of Sailor Road, a distance of 215.75 feet to a 5/8" iron rod, said point being the true point of beginning; thence, continuing along the West line of Sailor Road, N00°24'38"W, 375.12 feet to a 5/8" iron rod on the South line of State Highway No. 126; thence S87°15'49"W, along the South line of said Highway, a distance of 198.06 feet to a 5/8" iron rod on the East line of Vaughn-Noti Road; thence along the East line of said Road the following courses: S18°56'08"W, 335.68 feet to a 5/8" iron rod, and along the arc of a 746.20 foot radius curve to the right (the long chord of which bears S20°59'28"W, 53.53 feet), a distance of 53.54 feet to a 5/8" iron rod; thence N89°40'49"E, 328.63 feet to the true point of beginning, containing 2.23 acres of land, more or less.

PARCEL II

Beginning at the Southwest corner of Section 29, Township 17 South, Range 6 West of the Willamette Meridian; thence N89°47'07"E, along the South line of said Section 29, a distance of 1390.10 feet to a 3/4" iron pipe on the East line of Sailor Road, said point being the true point of beginning, thence continuing along the South line of said Section 29, N89°47'07"E, 788.95 feet to a 5/8" iron rod on the Southerly line of the Central Oregon & Pacific Railroad right-of-way, said point being 100.00 feet distant (measured at right angles to the centerline) from the centerline of the existing railroad tracks, thence along the arc of a 2764.93 foot radius curve to the right (the long chord of which bears S66°01'25"E, 906.54 feet), a distance of 910.60 feet to a 5/8" iron rod; thence N33°24'42"E, 75.00 feet to a 5/8" iron rod; thence along the arc of a 2839.93 foot radius curve to the left (the long chord of which bears N73°46'00"W, 1677.55 feet), a distance of 1702.86 feet to a 5/8" iron rod; thence S89°40'49"W, 49.09 feet to the East line of Sailor Road, thence S00°24'38"E, 165.87 feet to the true point of beginning, containing 4.14 acres of land, more or less.

2.23
4.14
3.11

9.48

PARCEL III

Beginning at the Southwest corner of Section 29, Township 17 South, Range 6 West of the Willamette Meridian; thence N89°47'07"E, along the South line of said Section 29, a distance of 1390.10 feet to a 3/4" iron pipe on the East line of Sailor Road; thence N00°24'38"W, along the East line of Sailor Road, a distance of 215.86 feet to a 5/8" iron rod, said point being the true point of beginning, thence N89°40'49"E, 48.62 feet to a 5/8" iron rod; thence along the arc of a 2889.93 foot radius curve to the right (the long chord of which bears S73°46'00"E, 1707.08 feet), a distance of 1732.84 feet to a 5/8" iron rod, thence N33°24'42"E, 75.00 feet to a 5/8" iron rod on the Northerly line of the Central Oregon & Pacific Railroad right-of-way, said point being 100.00 feet distant (measured at right angles to the centerline) from the centerline of the existing railroad tracks; thence along the arc of a 2964.93 foot radius curve to the left (the long chord of which bears N73°46'00"W, 1751.38 feet), a distance of 1777.82 feet; thence S89°40'49"W, 47.92 feet to the East line of Sailor Road; thence S00°24'38"E, 75.00 feet to the true point of beginning, containing 3.11 acres of land, more or less

LANE COUNTY, OR

Tax ID: 1702008
Prop Addr: UNKNOWN
City/State/Zip: ANYTOWNE OR 00000

OWNER
INFORMATION

Owner Name: SWANSON BROS LUMBER CO INC
Owner Addr: PO BOX 309
City/State/Zip: NOTI OR 97461

LAND INFORMATION

Lot SF: 137649 Acreage: 3 16

BUILDING INFORMATION

| | | | |
|----------------|---------------|--------------|---|
| Year Built: | Bedrooms: | Garage SF: | 0 |
| Bldg Type: | Bathrooms: | Gar/Attic: | |
| Fireplace: | Living SF: | Heat Method: | |
| Phy Deprec: | 1st Floor SF: | Roof Shape: | |
| Exterior Wall: | 2nd Floor SF: | Roof Mat: | |

SALES INFORMATION

| | Deed Type | Sale Date | Sale Price |
|----------|----------------|-----------|------------|
| Current: | QUITCLAIM DEED | 4/26/2002 | \$120,000 |
| Prior: | | | |

TAX INFORMATION

| | | | | |
|-----------|----------|---------------|----------|-------------------------|
| Tax Year: | 2007 | Land Val: | \$77,318 | |
| Tax Amt: | \$535 22 | Impv Val: | \$0 | |
| | | Assessed Val: | \$54,700 | Real Mrkt Val: \$77,318 |

LEGAL INFORMATION

| | | | |
|---------------|--|--------------------|----------------|
| Prop Class: | 300 - INDUSTRIAL LAND OR LAND WITH WELL AND SEPTIC | | |
| Occpncy Code: | Map Code: | 17-06-29-3-0-10500 | Tax Lot: 10500 |
| Area: | Township: | 17 | |
| Prop ID: | Section: | 29 | |
| Stat Class: | Range: | 06 | |
| | Qtr Section: | 3 | |
| Neighborhood: | 16th Section: | 0 | |

17062930

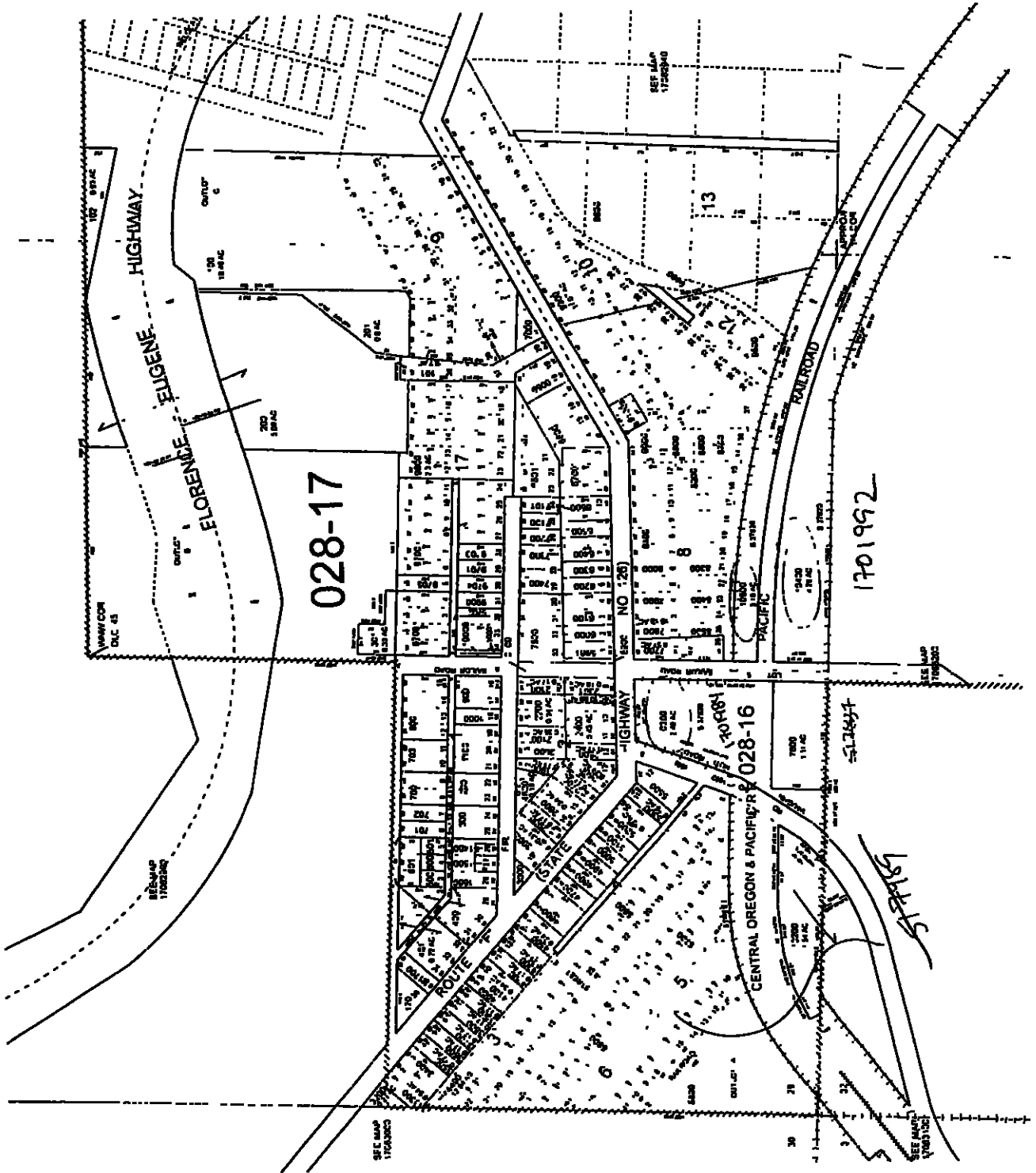
SW 1/4 SEC 29 T 17 S R 6 W W.M.
Lane County
1" = 200'

FOR ASSESSMENT AND
VALUATION ONLY

ALL DATA
NOT TO SCALE

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EXHIBIT 6

QUITCLAIM DEED

THIS INDENTURE WITNESSETH, That CENTRAL OREGON & PACIFIC RAILROAD, INC., a Delaware corporation, ("Grantor") having a mailing address of c/o Real Estate Department, 1355 Central Parkway South, Suite 700, San Antonio, Texas 78232, Releases and Quit-Claims to GARY WAGGONER and KARIN WAGGONER, a married couple, whose address is 1105 Decker Point Road, Reedsport, Oregon 97467, ("Grantee"), for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, all of its right, title and interest in and to all of that certain real property situated in Reedsport, County of Douglas, State of Oregon, as more particularly described in the Exhibit "A" attached and hereby made a part hereof, (the "Premises"), subject to all covenants, leases, licenses, conditions, restrictions, exceptions, easements, rights-of-way, rights-of-access, agreements, reservations, encumbrances, liens and other matters whether of record or not; any matters which would be disclosed by survey, investigation or inquiry; and any tax, assessment or other governmental lien against the Premises, together with all buildings, structures and improvements, and all and singular the rights, alleys, ways, waters, privileges, hereditaments and appurtenances to the Premises belonging or in anyway incident or appertaining (other than Excepted or Reserved herein).

Said property being a part of the same property conveyed by Southern Pacific Transportation Company to Central Oregon & Pacific Railroad, Inc. by deed dated December 31, 1994 and recorded among the land records of Douglas County, Oregon on Recorded January 3, 1995 in the Land Records of Douglas County, Instrument No: 95-00007, Book 1332, Page 767 hereinafter "Prior Deed").

SUBJECT TO any existing encumbrances which may or may not be revealed by an inspection of the Premises, all existing roads and public utilities; reservations, exceptions, easements and restrictions, both of record and not of record; any applicable laws; taxes and assessments, both general and special, which become due and payable after the date of conveyance and which Grantee assumes and agrees to pay.

AND, FURTHER SUBJECT TO those specific reservations, conditions and/or exceptions made by and in favor of Southern Pacific Transportation Company, its successors and assigns, in the Prior Deed, which may affect the hereinbefore described portion of the properties conveyed therein and thereby.

TO HAVE AND TO HOLD the same unto Grantee and Grantee's heirs, successors and assigns forever.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES. [ORS 93.040(1)]

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITTING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

Grantee acknowledges that Grantor is operating (and will continue to operate) a railroad upon its adjoining property, and recognizes that such operation may create some noises and vibrations affecting the Premises. Grantee accepts the Premises subject to such noises and vibrations, and hereby covenants to release Grantor from all liability, cost and expense resulting therefrom.

Grantee, by the acceptance hereof, hereby covenants and agrees with Grantor that Grantor shall not: be required to erect or maintain any fences, railings or guard rails along any boundary lines between the Premises and the adjacent land(s) of Grantor or of any other company affiliated with Grantor; or be liable for or required to pay any part of the cost or expense of erecting or maintaining such fences, railings or guard rails or any part hereof; or be liable for any damage, loss or injury that may result by reason of the nonexistence or the condition of any fences, railings or guard rails or the absence thereof. Grantee covenants and agrees that it shall erect and forever maintain a fence along the northern (trackside) boundary of the Premises, said fence or barricade to be subject to the approval of Grantor.

Grantee, by the acceptance hereof, hereby covenants that it, its successors, heirs, legal representatives or assigns, shall maintain the existing drainage on the Premises in such a manner as to not impair adjacent railroad right-of-way drainage and to not redirect or increase the quantity or velocity of surface water runoff or any streams into said Grantor's drainage system or upon the right-of-way or other lands and facilities of Grantor. If said Premises or existing drainage are modified or improved, Grantee agrees to construct and maintain, in accordance with all applicable statutes, ordinances, building and subdivision codes, covenants and restrictions, an adequate drainage system from the Premises to the

nearest public or non-Grantor owned drainage or storm sewer system, in order to prevent the discharge of roof, surface, stream and other drainage waters upon said right-of-way or upon other adjacent lands and facilities of Grantor.

Grantee accepts the Premises in "as is" condition as of the date of this conveyance. Grantee expressly assumes all obligations, liability and responsibility for physical and/or environmental condition of the Premises, prior to and including the date of conveyance, and agrees to defend, protect, indemnify and hold Grantor harmless from any and all loss, damages, suits, penalties, costs, liability, and/or expenses (including, but not limited to reasonable investigative and/or legal expenses) arising out of any claim(s), present, past or future, for loss or damage to any property, including the Premises, injuries to or death of any person(s), contamination of or adverse effects upon the environment (air, ground or water), or any violation of statutes, ordinances, orders, rules, or regulations of any governmental entity or agency, caused by or resulting from presence or existence of any hazardous material, hazardous substance, or hazardous waste in, on or under the Premises. Grantee acknowledges that the provisions of this paragraph and the condition of the Premises have been considered as part of the consideration for this conveyance.

The above covenants shall run with the title to the Premises conveyed, and bind upon the Grantee, Grantee's heirs, legal representatives and assigns, or corporate successors and assigns, and anyone claiming title to or holding Premises through Grantee.

The true and actual consideration paid for the transfer, stated in terms of dollars is \$22,500.

Send tax statements to: GARY & KARIN WAGGONER
 1105 Decker Point Road
 Reedsport, Oregon 97467

In construing this Deed and where the context so requires, the singular includes the plural, and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and individuals.

In Witness Whereof, the said CENTRAL OREGON & PACIFIC RAILROAD, INC. has hereunto set its seal, effective this 22nd day of June, 2006.

**CENTRAL OREGON & PACIFIC
RAILROAD, INC.**

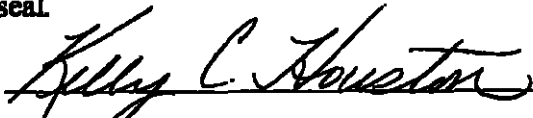


Todd N. Cecil
Vice President

STATE OF TEXAS)
) SS:
COUNTY OF BEXAR)

Before me, the undersigned, a Notary Public in and for said County, this 22nd day of June, 2006, came Todd N. Cecil, Vice President, on behalf of Central Oregon & Pacific Railroad, Inc. and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal.



Printed Name: Kelly C. Houston

Residing in Bexar County, Texas

My Commission Expires:

April 30, 2010



QUITCLAIM DEED

THIS INDENTURE WITNESSETH, That **CENTRAL OREGON & PACIFIC RAILROAD, INC.** , a(n) Delaware corporation, ("Grantor") having a mailing address of 333 S.E. Mosher, Roseburg, Oregon 97470, Releases and Quit-Claims to **DEAN WALKER**, a(n) Individual corporation, whose address is 245 Meadow Slope Drive, Talent, Oregon 97540, ("Grantee"), all of its right, title and interest in and to all of that certain real property situated in Ashland, County of Jackson, State of Oregon, as more particularly described in the Exhibit "A" attached and hereby made a part hereof, (the "Premises"), subject to all covenants, leases, licenses, conditions, restrictions, exceptions, easements, rights-of-way, rights-of-access, agreements, reservations, encumbrances, liens and other matters whether of record or not; any matters which would be disclosed by survey, investigation or inquiry; and any tax, assessment or other governmental lien against the Premises, together with all buildings, structures and improvements, and all and singular the rights, alleys, ways, waters, privileges, hereditaments and appurtenances to the Premises belonging or in anyway incident or appertaining (other than Excepted or Reserved herein).

Said property being a part of the same property conveyed by Southern Pacific Transportation Company to Central Oregon & Pacific Railroad, Inc by deed dated December 31, 1994 and recorded among the land records of Jackson County, Oregon on January 6, 1995, Instrument Number 95-010171 hereinafter "Prior Deed").

SUBJECT TO any existing encumbrances which may or may not be revealed by an inspection of the Premises, all existing roads and public utilities; reservations, exceptions, easements and restrictions, both of record and not of record; any applicable laws; taxes and assessments, both general and special, which become due and payable after the date of conveyance and which Grantee assumes and agrees to pay.

AND, FURTHER SUBJECT TO those specific reservations, conditions and/or exceptions made by and in favor of Southern Pacific Transportation Company, its successors and assigns, in the Prior Deed, which may affect the hereinbefore described portion of the properties conveyed therein and thereby.

TO HAVE AND TO HOLD the same unto Grantee and Grantee's heirs, successors and assigns forever.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES. [ORS 93.040(1)]

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITTING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

Grantee acknowledges that Grantor is operating (and will continue to operate) a railroad upon its adjoining property, and recognizes that such operation may create some noises and vibrations affecting the Premises. Grantee accepts the Premises subject to such noises and vibrations, and hereby covenants to release Grantor from all liability, cost and expense resulting therefrom.

Grantee, by the acceptance hereof, hereby covenants and agrees with Grantor that Grantor shall not be required to erect or maintain any fences, railings or guard rails along any boundary lines between the Premises and the adjacent land(s) of Grantor or of any other company affiliated with Grantor; or be liable for or required to pay any part of the cost or expense of erecting or maintaining such fences, railings or guard rails or any part hereof; or be liable for any damage, loss or injury that may result by reason of the nonexistence or the condition of any fences, railings or guard rails or the absence thereof. Grantee covenants and agrees that it shall erect and forever maintain a fence along the northern (trackside) boundary of the Premises, said fence or barricade to be subject to the approval of Grantor.

Grantee, by the acceptance hereof, hereby covenants that it, its successors, heirs, legal representatives or assigns, shall maintain the existing drainage on the Premises in such a manner as to not impair adjacent railroad right-of-way drainage and to not redirect or

increase the quantity or velocity of surface water runoff or any streams into said Grantor's drainage system or upon the right-of-way or other lands and facilities of Grantor. If said Premises or existing drainage are modified or improved, Grantee agrees to construct and maintain, in accordance with all applicable statutes, ordinances, building and subdivision codes, covenants and restrictions, an adequate drainage system from the Premises to the nearest public or non-Grantor owned drainage or storm sewer system, in order to prevent the discharge of roof, surface, stream and other drainage waters upon said right-of-way or upon other adjacent lands and facilities of Grantor.

Grantee accepts the Premises in "as is" condition as of the date of this conveyance. Grantee expressly assumes all obligations, liability and responsibility for physical and/or environmental condition of the Premises, prior to and including the date of conveyance, and agrees to defend, protect, indemnify and hold Grantor harmless from any and all loss, damages, suits, penalties, costs, liability, and/or expenses (including, but not limited to reasonable investigative and/or legal expenses) arising out of any claim(s), present, past or future, for loss or damage to any property, including the Premises, injuries to or death of any person(s), contamination of or adverse effects upon the environment (air, ground or water), or any violation of statutes, ordinances, orders, rules, or regulations of any governmental entity or agency, caused by or resulting from presence or existence of any hazardous material, hazardous substance, or hazardous waste in, on or under the Premises. Grantee acknowledges that the provisions of this paragraph and the condition of the Premises have been considered as part of the consideration for this conveyance.

The above covenants shall run with the title to the Premises conveyed, and bind upon the Grantee, Grantee's heirs, legal representatives and assigns, or corporate successors and assigns, and anyone claiming title to or holding Premises through Grantee

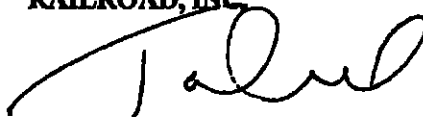
The true and actual consideration paid for the transfer, stated in terms of dollars is \$151,056.

Send tax statements to: Dean Walker
 245 Meadow Slope Drive
 Talent, Oregon 97540

In construing this Deed and where the context so requires, the singular includes the plural, and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and individuals.

In Witness Whereof, the said CENTRAL OREGON & PACIFIC RAILROAD, INC. has hereunto set its seal, effective this 30th day of September, 2005.

CENTRAL OREGON & PACIFIC
RAILROAD, INC.

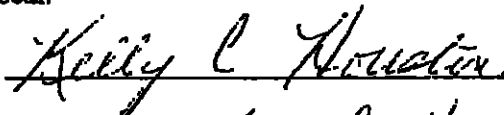


Todd N. Cecil
Vice President

STATE OF TEXAS)
) SS:
COUNTY OF BEXAR)

Before me, the undersigned, a Notary Public in and for said County, this 30th day of September, 2005, came Todd N. Cecil, Vice President, on behalf of Central Oregon & Pacific Railroad, Inc. and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal.

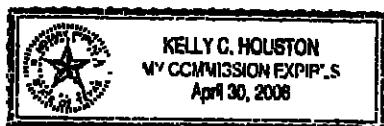


Printed Name Kelly C. Houston

Residing in Bexar County, TX

My Commission Expires:

April 30, 2008



763931-JP 1

QUITCLAIM DEED

Jackson County Official Records 2004-034686
 RECORDED
 UNIT 15 CUTTING 08/22/2004 09:00:00 AM
 \$25.00 \$0.00 \$11.00 Total: \$46.00



1. Jackson County Clerk for Jackson County, Oregon
 hereby certifies that the foregoing is a true and correct copy of the
 original as recorded in the County Clerk's Office.

THIS INDENTURE WITNESSETH, That **CENTRAL OREGON & PACIFIC RAILROAD, INC.**, a Delaware corporation ("Grantor"), having a mailing address of 333 SE Mosher, Roseburg, Oregon 97470, Releases and Quit-Claims to **GRANGE CO-OPERATIVE SUPPLY ASSOCIATION, INC.**, an Oregon corporation, whose address is P.O. Box 3637, Central Point, Oregon 97302 ("Grantee"), all of its right, title and interest in and to all of that certain real property situated in Central Point, County of Jackson, State of Oregon, as more particularly described in the Exhibit "A" attached and hereby made a part hereof, (the "Premises"), subject to all covenants, leases, licenses, conditions, restrictions, exceptions, easements, rights-of-way, rights of access, agreements, reservations, encumbrances, liens and other matters whether of record or not, any matters which would be disclosed by survey, investigation or inquiry; and any tax, assessment or other governmental lien against the Premises, together with all buildings, structures and improvements, and all and singular the rights, alleys, ways, waters, privileges, hereditaments and appurtenances to the Premises belonging or in anyway incident or pertaining (other than Excepted or Reserved herein)

RESERVING unto Grantor the ownership in and to all track(s) and other track material (including switches, signals, and ballast) within and on the Premises. Grantor shall have the option to remove, at its sole cost and expense, all such track(s) and other track material within the Premises within sixty (60) days of the closing of this sale. In the event of Grantor's failure to remove the track(s) and track materials from the Premises within this time period, the track (s) and track materials will automatically become the property of Grantee.

RESERVING unto Grantor, and Grantor's lessees, licensees, designees, successors, and assigns, the ownership of all existing railroad signal and communications equipment, railroad crossing warning and protection devices, poles, cables and other ancillary facilities located above, below and upon the Premises (hereinafter collectively referred to as the "Equipment"), along with an exclusive easement for the benefit of Grantor, and Grantor's lessees, licensees, designees, successors, and assigns over, above, upon and across the Premises for the operation, use, installation, maintenance, relocation, repair, and removal of Equipment.

Said property being a part of the same property conveyed by Southern Pacific Transportation Company to Central Oregon & Pacific Railroad, Inc. by deed dated December 31, 1994 and recorded among the land records of Jackson County, Oregon on January 3, 1995, Instrument No. 95-00050 (hereinafter "Prior Deed")

SUBJECT TO any existing encumbrances which may or may not be revealed by an inspection of the Premises, all existing roads and public utilities, reservations, exceptions, assessments and restrictions, both of record and not of record; any applicable laws, taxes and assessments, both general and special, which become due and payable after the date of conveyance and which Grantee assumes and agrees to pay.

AND, FURTHER SUBJECT TO those specific reservations, conditions and/or exceptions made by and in favor of Southern Pacific Transportation Company, its successors and assigns, in the Prior Deed, which may affect the hereinbefore described portion of the properties conveyed therein and thereby.

TO HAVE AND TO HOLD the same unto Grantee and Grantee's heirs, successors and assigns forever.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES [ORS 93.040(1)]

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITTING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

Grantee acknowledges that Grantor is operating (and will continue to operate) a railroad upon its adjoining property, and recognizes that such operation may create some noises and vibrations affecting the Premises. Grantee accepts the Premises subject to such noises and vibrations, and hereby covenants to release Grantor from all liability, cost and expense resulting therefrom.

Grantee, by the acceptance hereof, hereby covenants and agrees with Grantor that Grantor shall not be required to erect or maintain any fences, railings or guard rails along any boundary lines between the Premises and the adjacent land(s) of Grantor or of any other company affiliated with Grantor; or be liable for or required to pay any part of the cost or

Received: 10/ 8/04 14:48;

1541 664 3227 -> RAILAMERICA, INC.; Page 5

OCT-08-2004 13:00

MERITITLE CP

1541 664 3227 P.05/06

IN WITNESS WHEREOF, the said CENTRAL OREGON & PACIFIC RAILROAD, INC. has hereunto set its seal, effective this 18 day of June, 2004.

CENTRAL OREGON & PACIFIC
RAILROAD, INC.

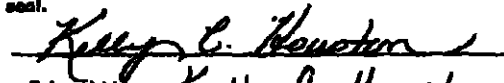


Todd N. Cecil
Vice President

STATE OF TEXAS)
) SS:
COUNTY OF BEXAR)

Before me, the undersigned, a Notary Public in and for said County, this 18 day of June, 2004, came Todd N. Cecil, Vice President, on behalf of Central Oregon & Pacific Railroad, Inc. and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal.



Printed Name Kelly C. Houston

Residing in Bexar County, Texas

My Commission Expires.

11-30-06



WTE 30-0596504 KJ
ACCT # 8515723

After recording return to:
Central Oregon & Pacific Railroad, Inc.
c/o Real Estate Department
4040 Broadway, Suite 200
San Antonio, Texas 78209

Division of Chief Deputy Clerk
Lane County Deeds and Records

2004-098815



\$66.00

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RPR-DEED Cnt=1 Str=8 CASHIER 01

\$25.00 \$20.00 \$11.00 \$10.00

QUIT CLAIM DEED

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KNOW ALL MEN BY THESE PRESENTS, That Central Oregon & Pacific Railroad, Inc., a(n) Delaware, hereinafter called "Grantor," for the consideration hereinafter stated, does hereby release and quitclaim unto Kay M. Larson, a(n) individual, with an address of 3890 Vine Maple Drive, Eugene, Oregon 97405, hereinafter called "Grantee," all of that certain real property situated in Veneta, Oregon, County of Lane, State of Oregon, as more particularly described in the Exhibit "A" attached and hereby made a part hereof, (the "Premises"), subject to all covenants, leases, licenses, conditions, restrictions, exceptions, easements, rights-of-way, rights-of-access, agreements, reservations, encumbrances, liens and other matters whether of record or not; any matters which would be disclosed by survey, investigation or inquiry; and any tax, assessment or other governmental lien against the Premises.

AND, MORE SPECIFICALLY SUBJECT TO those exceptions and reservations contained in that certain deed dated December 31, 1994 from Southern Pacific Transportation Company to the Grantor which was recorded in the land records of Lane County as Document No. 95000176, on January 3, 1995.

RESERVING unto Grantor, and its lessees, licensees, designees, successors, and assigns, the ownership of all existing signal and communications equipment, crossing warning and protection devices, and other railroad-related facilities located above, below and upon the Premises (hereinafter the "Equipment"), along with an exclusive easement for the operation, use, maintenance, relocation, repair, removal, and all additional actions related to the existence of the Equipment.

TO HAVE AND TO HOLD the same unto Grantee and Grantee's heirs, successors and assigns forever.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES. [ORS 93.040(1)]

Send tax statements to:

Kay M. Larson
Phoebe

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITTING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

Grantee acknowledges that Grantor is operating (and will continue to operate) a railroad upon its adjoining property, and recognizes that such operation may create some noises and vibrations affecting the Premises. Grantee accepts the Premises subject to such noises and vibrations, and hereby covenants to release Grantor from all liability, cost and expense resulting therefrom.

Grantee, by the acceptance hereof, hereby covenants that it, its successors, heirs, legal representatives or assigns, shall maintain the existing drainage on the Premises in such a manner as to not impair adjacent railroad right-of-way drainage and to not redirect or increase the quantity or velocity of surface water runoff or any streams into said Grantor's drainage system or upon the right-of-way or other lands and facilities of Grantor. If said Premises or existing drainage are modified or improved, Grantee agrees to construct and maintain, in accordance with all applicable statutes, ordinances, building and subdivision codes, covenants and restrictions, an adequate drainage system from the Premises to the nearest public or non-Grantor owned drainage or storm sewer system, in order to prevent the discharge of roof, surface, stream and other drainage waters upon said right-of-way or upon other adjacent lands and facilities of Grantor.

Grantee, by the acceptance hereof, hereby covenants and agrees with Grantor that Grantor shall not: be required to erect or maintain any fences, railings or guard rails along any boundary lines between the Premises and the adjacent land(s) of Grantor or of any other company affiliated with Grantor; or be liable for or required to pay any part of the cost or expense of erecting or maintaining such fences, railings or guard rails, or any part hereof; or be liable for any damage, loss or injury that may result by reason of the non-existence or the condition of any fences, railings or guard rails or the absence thereof. Grantee covenants and agrees that it shall erect and forever maintain a fence along the trackside boundary of the Premises, said fence or barricade to be subject to the approval of Grantor's General Manager.

Grantee, by the acceptance hereof, expressly acknowledges that Grantee is buying the Premises in an "AS IS" condition and that Grantee has relied upon its own independent investigation of the physical condition of the Premises. Grantee hereby releases Grantor and Grantor's shareholders, officers, directors, agents and employees from all responsibility and liability regarding the condition (including, but not limited to, the physical condition or presence of hazardous materials), valuation or utility of the Premises.

The above covenants shall run with the title to the Premises conveyed, and bind upon the Grantee, Grantee's heirs, legal representatives and assigns, or corporate successors and assigns, and anyone claiming title to or holding Premises through Grantee.

The true and actual consideration paid for the transfer, stated in terms of dollars, is SIXTY-SIX THOUSAND AND NO/100 DOLLARS (\$66,000.00) (ORS 93.030).

In construing this Deed and where the context so requires, the singular includes the plural, and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and individuals.

IN WITNESS WHEREOF, the Grantor has executed this instrument effective the 27th day of December, 2004; if a corporate Grantor, it has caused its name to be signed and its seal affixed by its officers duly authorized thereto by order of its Board of Directors.

GRANTOR: Central Oregon & Pacific Railroad, Inc.

By: 

Todd N. Cecil
Vice President

(Notary acknowledgment on following page)

STATE OF TEXAS)

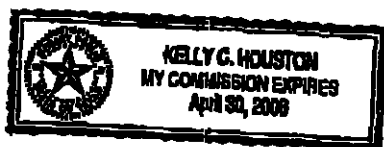
) ss.

COUNTY OF BEXAR)

On this 27th day of December, in the year 2004, before me, Kelly C. Houston, a Notary Public in and for the County of Bexar, State of Texas, personally appeared Todd N. Cecil, known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) who executed the within instrument as Vice President, for and on behalf of Central Oregon & Pacific Railroad, Inc., therein named and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its Board of Directors.

Kelly C. Houston
Notary Public

My Commission Expires: April 30, 2006



RETURN TO CASCADE TITLE CO.

@ 238823

EVd4-4758 LTB

①

Division of Chief Deputy Clerk
Lane County Deeds and Records

2004-021654



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03/26/2004 03:43:39 PM

RPR-DEED Cnt=1 Str=6 CASHIER 07

\$30.00 \$20.00 \$11.00 \$10.00

QUITCLAIM DEED

THIS INDENTURE WITNESSETH, That **CENTRAL OREGON & PACIFIC RAILROAD, INC.**, a(n) Delaware corporation, ("Grantor") having a mailing address of 333 E. Mosher, Roseburg, Oregon 97470, Releases and Quit-Claims to **BOHEMIA FOUNDATION, INC.**, a(n) Oregon corporation, whose address is P.O. Box 10293 Eugene, Oregon 97440, ("Grantee"), for the consideration hereinafter stated, the receipt whereof is hereby acknowledged, all of its right, title and interest in and to all of that certain real property situated in Cottage Grove, County of Lane, State of Oregon, as more particularly described in the Exhibit "A" attached and hereby made a part hereof, (the "Premises"), subject to all covenants, leases, licenses, conditions, restrictions, exceptions, easements, rights-of-way, rights-of-access, agreements, reservations, encumbrances, liens and other matters whether of record or not; any matters which would be disclosed by survey, investigation or inquiry; and any tax, assessment or other governmental lien against the Premises, together with all buildings, structures and improvements, and all and singular the rights, alleys, ways, waters, privileges, hereditaments and appurtenances to the Premises belonging or in anyway incident or appertaining (other than Excepted or Reserved herein).

RESERVING unto Grantor, and its lessees, licensees, designees, successors, and assigns, the ownership of all track and other track materials located within the boundaries of the Premises, along with an exclusive easement for a period of ninety (90) days after the date of this deed to enter onto the Premises to remove track and track materials. In the event that any track and/or track materials are not removed within the ninety (90) day period, these materials shall become the property of Grantee.

RESERVING unto Grantor, and Grantor's lessees, licensees, designees, successors, and assigns, the ownership of all existing railroad signal and communications equipment, railroad crossing warning and protection devices, poles, cables and other ancillary facilities located above, below and upon the Premises (hereinafter collectively referred to as the "Equipment"), along with an exclusive easement for the benefit of Grantor, and Grantor's lessees, licensees, designees, successors, and assigns over, above, upon and across the Premises for the operation, use, installation, maintenance, relocation, repair, and removal of Equipment.

Said property being a part of the same property conveyed by Southern Pacific Transportation Company to Central Oregon & Pacific Railroad, Inc. by deed dated December 31, 1994 (hereinafter "Prior Deed").

SUBJECT TO any existing encumbrances which may or may not be revealed by an inspection of the Premises, all existing roads and public utilities; reservations, exceptions, easements and restrictions, both of record and not of record; any applicable laws; taxes and assessments, both general and special, which become due and payable after the date of conveyance and which Grantee assumes and agrees to pay.

AND, FURTHER SUBJECT TO those specific reservations, conditions and/or exceptions made by and in favor of Southern Pacific Transportation Company, its successors and assigns, in the Prior Deed, which may affect the hereinbefore described portion of the properties conveyed therein and thereby.

TO HAVE AND TO HOLD the same unto Grantee and Grantee's heirs, successors and assigns forever.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES. [ORS 93.040(1)]

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITTING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

Grantee acknowledges that Grantor is operating (and will continue to operate) a railroad upon its adjoining property, and recognizes that such operation may create some noises and vibrations affecting the Premises. Grantee accepts the Premises subject to such noises and vibrations, and hereby covenants to release Grantor from all liability, cost and expense resulting therefrom.

Grantee acknowledges that the Premises herein conveyed are adjacent and contiguous to Grantor's mainline or passing track(s), right of way and/or yard operations, with increased exposure to hazards or dangers from railroad accidents or derailment and potential injury to business invitees, guests and/or employees of Grantee and others from and on the Premises, including resultant loss of business or revenue, and in further consideration for this conveyance, Grantee: (a) expressly assumes all responsibility to keep all personal property, equipment, and personnel of Grantee, and any business or social invitees of Grantee, off of and away from Grantor's adjacent railroad property and operations, and (b) assumes, and also agrees to defend, indemnify and hold Grantor harmless from: any claims for death of or personal injury to any person(s), or loss of or damage to any property, including death of or injury to any employee(s) of either Grantor or Grantee and loss of or damage to any property of Grantor or Grantee, either (i) occurring on the adjacent railroad property and operations of Grantor, and arising directly or indirectly from Grantee's failure to keep such persons, property, or equipment off of said adjacent railroad property and away from operations, or (ii) occurring on the Premises but which arise directly, indirectly, or consequently from any train accident or rail car derailment on, or objects propelled from, said adjacent track(s); regardless of any contributory or causally proximate fault, failure or negligence of Grantor: but only if said death, injury, damage or destruction would not have occurred but for Grantee's presence on the Premises.

GRANTEE, by the acceptance hereof, hereby covenants and agrees with Grantor that Grantor shall not: be required to erect or maintain any fences, railings or guard rails along any boundary lines between the Premises and the adjacent land(s) of Grantor or of any other company affiliated with Grantor; or be liable for or required to pay any part of the cost or expense of erecting or maintaining such fences, railings or guard rails or any part hereof; or be liable for any damage, loss or injury that may result by reason of the nonexistence or the condition of any fences, railings or guard rails or the absence thereof. Grantee covenants and agrees that it shall erect and forever maintain a fence along the northern (trackside) boundary of the Premises, said fence or barricade to be subject to the approval of Grantor.

Grantee, by the acceptance hereof, hereby covenants that it, its successors, heirs, legal representatives or assigns, shall maintain the existing drainage on the Premises in such a manner as to not impair adjacent railroad right-of-way drainage and to not redirect or increase the quantity or velocity of surface water runoff or any streams into said Grantor's drainage system or upon the right-of-way or other lands and facilities of Grantor. If said Premises or existing drainage are modified or improved, Grantee agrees to construct and maintain, in accordance with all applicable statutes, ordinances, building and subdivision codes, covenants and restrictions, an adequate drainage system from the Premises to the nearest public or non-Grantor owned drainage or storm sewer system, in order to prevent the discharge of roof, surface, stream and other drainage waters upon said right-of-way or upon other adjacent lands and facilities of Grantor.

Grantee accepts the Premises in "as is" condition as of the date of this conveyance. Grantee expressly assumes all obligations, liability and responsibility for physical and/or environmental condition of the Premises, prior to and including the date of conveyance, and agrees to defend, protect, indemnify and hold Grantor harmless from any and all loss, damages, suits, penalties, costs, liability, and/or expenses (including, but not limited to reasonable investigative and/or legal expenses) arising out of any claim(s), present, past or future, for loss or damage to any property, including the Premises, injuries to or death of any person(s), contamination of or adverse effects upon the environment (air, ground or water), or any violation of statutes, ordinances, orders, rules, or regulations of any governmental entity or agency, caused by or resulting from presence or existence of any hazardous material, hazardous substance, or hazardous waste in, on or under the Premises. Grantee acknowledges that the provisions of this paragraph and the condition of the Premises have been considered as part of the consideration for this conveyance.

The above covenants shall run with the title to the Premises conveyed, and bind upon the Grantee, Grantee's heirs, legal representatives and assigns, or corporate successors and assigns, and anyone claiming title to or holding Premises through Grantee.


The true and actual consideration paid for the transfer, stated in terms of dollars is One Hundred Twenty-Three Thousand and No/100 Dollars (\$123,000.00).

Send tax statements to: BOHEMIA FOUNDATION, INC.
P.O. Box 10293
Eugene, Oregon 97440

In construing this Deed and where the context so requires, the singular includes the plural, and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and individuals.

In Witness Whereof, the said CENTRAL OREGON & PACIFIC RAILROAD, INC. has hereunto set its seal, effective this 26th day of March, 2004.

CENTRAL OREGON & PACIFIC RAILROAD, INC.


Todd N. Cecil
Vice President

(Acknowledgment on following page)

STATE OF TEXAS)
) SS:
COUNTY OF BEXAR)

Before me, the undersigned, a Notary Public in and for said County, this 24 day of March, 2004, came Todd N. Cecil, Vice President, on behalf of Central Oregon & Pacific Railroad, Inc. and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal.

Kelly C. Houston
Printed Name Kelly C. Houston
Residing in Bexar County, Tx

My Commission Expires:

April 30, 2008



Easement for Roadway Purposes

THIS Easement is made as of the 12th day of June, 2003 between **Central Oregon & Pacific Railroad, Inc.**, a Delaware corporation, ("Grantor") with an address for the purpose of this Agreement of 4040 Broadway, Suite 200, San Antonio, Texas 78209, and **Copeland Sand and Gravel**, an Oregon corporation ("Grantee") whose address is P.O. Box 608, Grants Pass, Oregon 97526.

The Grantor for and in consideration of the sum of a one time fee of Two Hundred Thousand Dollars and No Cents (\$200,000.00) [and other valuable consideration] to it paid by the Grantee, the receipt whereof is hereby confessed and acknowledged, does hereby grant unto the Grantee, and unto its successors and assigns, an EASEMENT, on, along and over property (hereinafter the "Property") situated in Grants Pass, Josephine County, State of Oregon, near Mile Post 475 as more particularly described in Exhibit A, attached hereto and made a part hereof

The easement herein granted is for surface roadway purposes. Without limitation of the foregoing, this grant shall include the right to install water pipelines, sewer pipelines, gas pipelines, electrical, and telephone lines within the Property. Grantee shall use its best efforts to locate said utilities as far from Grantor's tracks as possible.

RESERVING, however, unto the Grantor, its successors and assigns, the right to construct at any and all times and to maintain railroad tracks, track appurtenances, fiber optic or signal lines and facilities, pipe, telephone, and electric pole and wire lines, over, under and across the Property, but in such a way as to not unreasonably interfere with Grantee's use of the Property for the purposes specified in this easement; it being understood that the rights so reserved unto the Grantor, its successors and assigns, are retained along with the general right of the Grantor, its successors and assigns, to the use of the Property for any purpose not inconsistent with Grantee's use of the Property, for the purposes herein defined, including, but not limited to any and all general railroad purposes.

This Easement is also made SUBJECT to all outstanding leases, licenses and other outstanding rights, all existing roads and public utilities; reservations, exceptions, easements and restrictions of record including, but not limited to, those for pipe, telephone, electric and fiber optic lines and the right of renewals and extensions of the same, and subject also to all other conditions, limitations, restrictions, encumbrances, reservations or interests of any person of record which may affect the Property.

This Easement is also limited to such rights as the Grantor may have in the Property and is granted without warranty, express or implied. No damages shall be recoverable from Grantor because of any dispossession of the Grantee or because of failure of, or defect in, Grantor's title.

At all times during which this Easement remains in force, and subject to the provisions herein concerning entry on Grantor's property, and at Grantee's own sole cost and expense, Grantee shall, if so directed by Grantor's General Manager, erect a continuous fence or barrier,

acceptable to Grantor, on or within the boundary of the Easement. Grantee shall not commence construction of its fence or barrier without Grantor's written approval of its plan for the fence or barrier, submitted to Grantor's General Manager not less than 10 days before commencement of construction. Grantor shall approve or disapprove of Grantee's plan in Grantor's own sole discretion.

Except in the event of a bona fide emergency, Grantee shall not enter on Grantor's adjacent property or permit others to enter without written notice to Grantor's General Manager no less than 5 days prior to the proposed entry, for any purpose, including, without limitation, installation, use, construction, maintenance, repair or removal of Grantee's improvements within the Easement. Grantor reserves the right to withhold consent to Grantee's proposed entry or to impose conditions on said entry in its own sole discretion.

Grantee, by the acceptance hereof, shall indemnify and hold Grantor harmless from any and all damages, demands for damages, claims, causes of action, loss, costs, fees or expenses for personal injury (including death) or property damage, to Grantor and any other person or entity, including, without limitation, (a) loss, damage or injury to Grantor's property, improvements or equipment, and (b) the presence, discharge, spill or release of toxic or hazardous materials, as defined by applicable municipal, state or federal statutes, laws or regulations, arising out of or in any way relating to the existence of this Easement, the presence of Grantee's improvements within the Easement or use by, presence on, or activities relating to the Easement of Grantee or any other person or entity, except to the extent caused by Grantor's own, sole negligence or intentional conduct.

Grantee, by the acceptance hereof, hereby covenants that it, its successors, heirs, legal representatives or assigns, shall maintain the existing drainage on the Property in such a manner as to not impair adjacent railroad right-of-way drainage and to not redirect or increase the quantity or velocity of surface water runoff or any streams into said Grantor's drainage system or upon the right-of-way or other lands and facilities of Grantor.

In the event of any dispute concerning the terms of this Easement or effort to enforce the Easement or any of its terms, the prevailing party in any litigation, arbitration, mediation or other dispute resolution format, shall be entitled to recover from the other party, its costs, expenses and attorney's fees, including, without limitation costs of depositions and the fees of expert witnesses whether or not used at trial, incurred before suit is filed, before, during and after any trial or other proceeding and in any appeal therefrom.

Grantee shall pay for any increases in property taxes or assessments on the Property resulting from Grantee's use of the Property or from any improvements or structures placed thereon by Grantee.

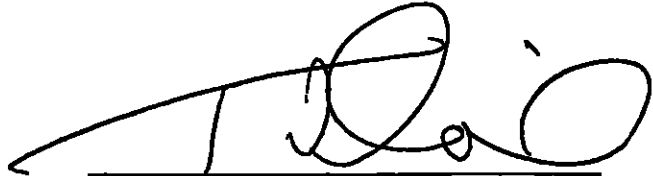
The Grantor and Grantee intend that, the real property rights conveyed by Grantor to Grantee herein shall be dedicated to the City of Grants Pass, Oregon, or its designee, for use as a public street and accessory development consistent with, and subject to the limitations contained in, this agreement. This easement shall be assignable for this purpose.

Grantee shall not assign this Agreement, without the prior written consent of Grantor, which consent shall not be unreasonably withheld.

It is expressly made a condition of this Easement that if the Grantee, or its successors or assigns, shall abandon the Property or any portion of the Property, for the purposes of this Easement, the rights herein granted shall cease and terminate with respect to the portion of the Property so abandoned, and the title to the Property shall be freed from the burden of this Easement. It is further agreed that nonuse of the Property or any portion thereof, for the purposes of this Easement for the period of one (1) year shall be deemed an abandonment of the Property or portion thereof not used.

IN WITNESS WHEREOF, the Grantor and Grantee hereby acknowledge their respective agreement to the terms and conditions contained herein, and have caused this easement agreement to be duly executed below as of the date first herein written.

Central Oregon & Pacific Railroad, Inc.



Todd N. Cecil,
Vice President - Real Estate

ACKNOWLEDGMENT

STATE OF TEXAS)
) SS:
COUNTY OF BEXAR)

Before me, the undersigned, a Notary Public in and for said County, this 13th day of June, 2003, came Todd N. Cecil, Vice President - Real Estate on behalf of Central Oregon & Pacific Railroad, Inc., and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal.



Printed Name HAZEL J. BAUER

Residing in GUADALUPE County, TEXAS

My Commission Expires:

MAR. 7, 2004

03 18812

33

AFTER RECORDING RETURN TO:

meriTitle 756346-EV

20
10
11

QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That **CENTRAL OREGON & PACIFIC RAILROAD, INC.**, a Delaware corporation, hereinafter called "Grantor," for the consideration hereinafter stated, does hereby release and quitclaim unto **URBAN RENEWAL AGENCY OF THE CITY OF TALENT**, a municipal corporation with an address of P O. Box 445, Talent, Oregon 97540, hereinafter called "Grantee," all of that certain real property situated in the City of Talent, County of Jackson, State of Oregon, as more particularly described as follows:

Being a portion of that land described in Document No 95-00050, Official Records of Jackson County, Oregon, lying in Section 23, Township 38 South, Range 1 West, Willamette Meridian, City of Talent, Jackson County, Oregon being more particularly described as follows:

Beginning at the most Westerly corner of Parcel No. 2 per Partition Plat No. P-118-1991, according to the Official Plat thereof, now of record, in Volume 2, Page 118 of "Record of Partition Plats" of Jackson County, Oregon, and filed as Survey Number 12743 in the Office of the Jackson County Surveyor; thence along the Southwesterly line of that tract described in Document No 98-15517, Official Records of Jackson County, Oregon, North 42°26'24" West, 42.00 feet to the most Westerly corner of said tract and the true point of beginning; thence along the Northwesterly line of said tract, North 47°30'00" East, 219.90 feet to the Southwesterly line of Block "L", Town of Talent, according to the official plat thereof, now of record, in Jackson County, Oregon, thence along the Southwesterly lines of Blocks "L" and "M", said Town of Talent, North 42°30'00" West, 287.50 feet, to the most Easterly corner of that tract described in Document

Consideration:

\$182,887.00

No. 01-17025, said Official Records; thence along the Southeasterly line thereof, South 47°30'00" West, 149.60 feet to a point being 100 feet Northeasterly of when measured at right angles to the centerline of Central Oregon & Pacific Main Track as located and shown on said Survey No. 12743; thence parallel to and 100 feet Northeasterly from said centerline, North 42°26'24" West, 200.00 feet to the most Westerly corner of that tract described in Document No. 83-06584, said Official Records; thence along the Northwesterly line thereof, North 47°30'00" East, 24.65 feet to the North line of Donation Land Claim No. 64, Township 38 South, Range 1 West, Willamette Meridian, Jackson County, Oregon; thence along said North line, North 89°57'47" West, 128.34 feet to a point being 30 feet Northeasterly from when measured at right angles to the centerline of said Main Track; thence parallel to and 30 Northeasterly from said centerline, South 42°26'24" East, 574.26 feet to the true point of beginning and containing 81283 square feet or 1.867 acres, more or less.

(the "Premises"), subject to all covenants, leases, licenses, conditions, restrictions, exceptions, easements, rights-of-way, rights-of-access, agreements, reservations, encumbrances, liens and other matters whether of record or not; any matters which would be disclosed by survey, investigation or inquiry; and any tax, assessment or other governmental lien against the Premises.

AND, MORE SPECIFICALLY SUBJECT TO those exceptions and reservations contained in that certain deed dated December 31, 1994 from Southern Pacific Transportation Company to the Grantor which was recorded in the land records of Jackson County as Document No. 95-00050 on January 3, 1995.

TO HAVE AND TO HOLD the same unto Grantee and Grantee's heirs, successors and assigns forever.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES. [ORS 93.040(1)]

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITTING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON

ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

Grantee acknowledges that Grantor is operating (and will continue to operate) a railroad upon its adjoining property, and recognizes that such operation may create some noises and vibrations affecting the Premises. Grantee accepts the Premises subject to such noises and vibrations, and hereby covenants to release Grantor from all liability, cost and expense resulting therefrom. Grantee, by the acceptance hereof, hereby covenants that it, its successors, heirs, legal representatives or assigns, shall maintain the existing drainage on the Premises in such a manner as to not impair adjacent railroad right-of-way drainage and to not redirect or increase the quantity or velocity of surface water runoff or any streams into said Grantor's drainage system or upon the right-of-way or other lands and facilities of Grantor. If said Premises or existing drainage are modified or improved, Grantee agrees to construct and maintain, in accordance with all applicable statutes, ordinances, building and subdivision codes, covenants and restrictions, an adequate drainage system from the Premises to the nearest public or non-Grantor owned drainage or storm sewer system, in order to prevent the discharge of roof, surface, stream and other drainage waters upon said right-of-way or upon other adjacent lands and facilities of Grantor.

Grantee, by the acceptance hereof, hereby covenants and agrees with Grantor that Grantor shall not: be required to erect or maintain any fences, railings or guard rails along any boundary lines between the Premises and the adjacent land(s) of Grantor or of any other company affiliated with Grantor; or be liable for or required to pay any part of the cost or expense of erecting or maintaining such fences, railings or guard rails, or any part hereof; or be liable for any damage, loss or injury that may result by reason of the non-existence or the condition of any fences, railings or guard rails or the absence thereof. Grantee covenants and agrees that it shall erect and forever maintain a fence along the trackside boundary of the Premises, said fence or barricade to be subject to the approval of Grantor's General Manager.

Grantee, by the acceptance hereof, expressly acknowledges that Grantee is buying the Premises in an "AS IS" condition and that Grantee has relied upon its own independent investigation of the physical condition of the Premises. Grantee hereby releases Grantor and Grantor's shareholders, officers, directors, agents and employees from all responsibility and liability regarding the condition (including, but not limited to, the physical condition or presence of hazardous materials), valuation or utility of the Premises.

The above covenants shall run with the title to the Premises conveyed, and bind upon the Grantee, Grantee's heirs, legal representatives and assigns, or corporate successors and assigns, and anyone claiming title to or holding Premises through Grantee.

03 18812

The true and actual consideration paid for the transfer, stated in terms of dollars, is One Hundred Eighty-two Thousand Eight Hundred Eighty-seven and No/100 Dollars (\$182,887.00). (ORS 93.030)

In construing this Deed and where the context so requires, the singular includes the plural, and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and individuals.

IN WITNESS WHEREOF, the Grantor has executed this instrument this 27 day of March, 2003, if a corporate Grantor, it has caused its name to be signed and its seal affixed by its officers duly authorized thereto by order of its Board of Directors.

Jackson County, Oregon
Recorded
OFFICIAL RECORDS

MAR 27 2003
2:30 PM
[Signature]
COUNTY CLERK

GRANTOR: CENTRAL OREGON & PACIFIC
RAILROAD, INC.

By: *[Signature]*
Todd N. Cecil, Vice President - Real Estate

STATE OF TEXAS)
) ss.
COUNTY OF BEXAR)

On this 27 day of March, in the year 2003, before me Kelly C Houston, a Notary Public in and for the County of Bexar, State of Texas, personally appeared Todd N. Cecil, known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) who executed the within instrument as Vice President for Central Oregon & Pacific Railroad, Inc., therein named and acknowledged to me that such corporation executed the within instrument pursuant to its By-laws or a Resolution of its Board of Directors.

Kelly C Houston
Notary Public

My Commission Expires: April 30, 2006



02 50635

11/24/jrr-
20.-
10.-
11.-

QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That CENTRAL OREGON & PACIFIC RAILROAD COMPANY, INC., a Delaware corporation, hereinafter called "Grantor," for the consideration hereinafter stated, does hereby release and quitclaim unto GOLD ENTERPRISES, INC., a corporation of the State of Oregon, with an address of P.O. Box 1974, Klamath Falls, Oregon 97601, hereinafter called "Grantee," all of that certain real property situated in the City of Gold Hill, County of Jackson, State of Oregon, as more particularly described as follows:

A parcel of land lying between First Street, West and Fourth Street, West in the City of Gold Hill, Jackson County, Oregon, in Section 22, Township 36 South, Range 3 West of the Willamette Meridian in Jackson County, Oregon, described as follows: Beginning at the southerly right of way line of the Southern Pacific Railroad and the northerly right of way line of the Oregon State Highway #234; thence North 77°20'00" West 998.78 feet to the centerline of said Fourth Street; thence South 12°40'00" West 180.00 feet, along said centerline, to the northerly line of Second Avenue and the easement line granted to the State of Oregon, by instrument recorded in Volume 202 Page 561 of the Deed Records of Jackson County, Oregon; thence South 77°20'00" East 550.00 feet, along said right of way line, thence, along a curve with radius of 341.05 feet to the left, being also the northerly right of way of Oregon State Highway #234, a distance of 141.04 feet; thence North 78°47'57" East, along said right of way line, 182.49 feet; thence North 74°31'00" East 163.00 feet to the point of beginning. EXCEPTING THEREFROM any portion lying within Block Twenty (20) of the City of Gold Hill, Jackson County, Oregon, according to the official plat thereof, now of record.

(Code 6-1, Account #1-65271-1, Map #363W22BA, Tax Lot #5400)

(the "Premises"), subject to all covenants, leases, licenses, conditions, restrictions, exceptions, easements, rights-of-way, rights-of-access, agreements, reservations, encumbrances, liens and other matters whether of record or not, any matters which would be disclosed by survey, investigation or inquiry; and any tax, assessment or other governmental lien against the Premises.

AND, MORE SPECIFICALLY SUBJECT TO those exceptions and reservations contained in that certain deed dated December 31, 1994 from Southern Pacific Transportation Company to the Grantor which was recorded in the land records of Jackson County as Document No. 95-00050 on January 3, 1995.

TO HAVE AND TO HOLD the same unto Grantee and Grantee's heirs, successors and assigns forever.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES. (ORS 93.040(1))

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITTING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

Grantor acknowledges that Grantor is operating (and will continue to operate) a railroad upon its adjoining property, and recognizes that such operation may create some noises and vibrations affecting the Premises. Grantor accepts the Premises subject to such noises and vibrations, and hereby covenants to release Grantor from all liability, cost and expense resulting therefrom.

Grantee, by the acceptance hereof, hereby covenants that it, its successors, heirs, legal representatives or assigns, shall maintain the existing drainage on the Premises in such a manner as to not impair adjacent railroad right-of-way drainage and to not redirect or increase the quantity or velocity of surface water runoff or any stream into said Grantor's drainage system or upon the right-of-way or other lands and facilities of Grantor. If said Premises or existing drainage are modified or improved, Grantee agrees to construct and maintain, in accordance with all applicable statutes, ordinances, building and subdivision codes, covenants and restrictions, an adequate drainage system from the Premises to the nearest public or non-Grantor owned drainage or storm sewer system, in order to prevent the discharge of roof, surface, stream and other drainage waters upon said right-of-way or upon other adjacent lands and facilities of Grantor.

Grantee, by the acceptance hereof, hereby covenants and agrees with Grantor that Grantor shall not: be required to erect or maintain any fences, railings or guard rails along any boundary lines between the Premises and the adjacent land(s) of Grantor or of any other company affiliated with Grantor; or be liable for or required to pay any part of the cost or expense of erecting or maintaining such fences, railings or guard rails, or any part hereof; or be liable for any damage, loss or injury that may result by reason of the non-existence or the condition of any fences, railings or guard rails or the absence thereof.

02 50635

Grantee, by the acceptance hereof, expressly acknowledges that Grantee is buying the Premises on an "AS IS" condition and that Grantee has relied upon its own independent investigation of the physical condition of the Premises.


The above covenants shall run with the title to the Premises conveyed, and bind upon the Grantee, Grantee's heirs, legal representatives and assigns, or corporate successors and assigns, and anyone claiming title to or holding Premises through Grantee.

The true and actual consideration paid for the transfer, stated in terms of dollars, is Two Hundred Thousand Dollars (\$200,000.00). (ORS 93.030)

In construing this Deed and where the context so requires, the singular includes the plural, and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and individuals.

IN WITNESS WHEREOF, the Grantor has executed this instrument this 20th day of September, 2002; if a corporate Grantor, it has caused its name to be signed and its seal affixed by its officers duly authorized thereto by order of its Board of Directors.

GRANTOR: CENTRAL OREGON & PACIFIC
RAILROAD, INC.

By: 
Todd N. Cecil
Vice President - Real Estate,

(Notary Acknowledgment on following page)

02 50635

STATE OF TEXAS)
) ss.
COUNTY OF BEXAR)

On this 20th day of September, in the year 2002, before me, Dorothy Nicholson,
a Notary Public in and for the County of Bexar, State of Texas, personally appeared Todd N. Cecil,
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) who
executed the within instrument as Vice President-Real Estate of Central Oregon & Pacific Railroad,
Inc., therein named and acknowledged to me that such corporation executed the within instrument
pursuant to its by-laws or a resolution of its Board of Directors.



Dorothy Nicholson
Notary Public

My Commission Expires: 3/2/2006

Jackson County, Oregon
Recorded
OFFICIAL RECORDS

SEP 25 2002
8:30 AM
[Signature]
COUNTY CLERK

After Recording Return to:

**Kay Mary Larson/Larry M. Larson
3890 Vine Maple Drive
Eugene, OR 97405**

Send Tax Statements To:

**Kay Mary Larson/ Larry M Larson
3890 Vine Maple drive
Eugene, OR 97405**

PROPERTY LINE ADJUSTMENT DEED

The parties to this transfer are **CENTRAL OREGON & PACIFIC RAILROAD, INC.**, a Delaware corporation, Grantor, and **KAY MARY LARSON and LARRY M LARSON, Wife and Husband**, Grantees. The parties are joining in this transfer to adjust the property line along their shared boundary to comply with the City of Veneta Land Use Regulations and the provisions of ORS 92.190(4).

Grantor received title to its property (railroad right-of-way for the Coos Bay Branch) by that certain Quitclaim Deed recorded January 3, 1995, Reel 2026R, Reception No. 9500017, Lane County Official Records. The legal description of that portion of Grantor's property affected by, and prior to, this property line adjustment is contained in that deed recorded October 16, 1911, in Book 94, Page 54, Lane County Oregon Deed Records.

Grantees received title to their property by that certain Deed dated October 26, 1995 and recorded December 1, 1995, Reception No 9569168, Lane County Official Records, and by that certain Deed dated February 15, 2000 and recorded February 18, 2000, Reception No. 200009713 and the legal description of the Grantees' property prior to this property line adjustment is contained therein.

For the purpose of accomplishing this property line adjustment, Grantor does hereby release and quitclaim to Grantees that portion of Grantor's property described in Exhibit A (Subject Property).

The legal description of Grantor's property after this property line adjustment is as follows:

That strip of land of variable width conveyed by deed recorded October 16, 1911 in Book 94, Page 54, Lane County Oregon Deed Records, excepting therefrom that parcel of land described in Exhibit A and that parcel of land conveyed by Grantor to Territorial West, LLC by deed recorded May 16, 2000, Reception No. 2000027619, Lane County Oregon Deed Records.

The legal description of Grantee's property after this property line adjustment is contained in the attached Exhibit B.

The portion of the legal description that depicts the new adjusted property line between Grantor's property and Grantee's property is underlined on Exhibit A.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY USES.

Grantee, by acceptance of this Deed, covenants that it, and its successors and assigns, shall maintain the existing drainage on the subject Property in such a manner as to not impair adjacent railroad right-of-way drainage and to not redirect or increase the quantity or velocity of surface water run off or any streams into Grantor's drainage system or upon right-of-way. If the Subject Property or existing drainage are modified or improved, Grantee agrees to construct and maintain, in accordance with applicable statutes, ordinances, building and development codes, an adequate drainage system from the Subject Property to the nearest public or non-Grantor owned drainage or storm sewer system, in order to prevent the discharge of roof, surface, stream and other drainage waters from the Subject Property upon railroad right-of-way.

By acceptance of this Deed, Grantee covenants that Grantor shall not be required to erect or maintain any fences, railings or guard rails along the boundary lines between the Subject Property and the adjacent land of Grantor or any other company affiliated with Grantor; be liable for or required to pay any part of the cost or expense of erecting or maintaining such fences, railings or guard rails, or any part thereof; or be liable to Grantee for any loss or injury that may result by reason of the non-existence or the condition of any fences, railings or guard rails, or the absence thereof.

The true consideration for this conveyance is Thirty Thousand and No/100 Dollars (\$30,000.00)

Dated this 24th day of May, 2001

Central Oregon & Pacific Railroad, Inc.

By: 

Todd N Cecil
Vice President - Real Estate

Larry M. Larson

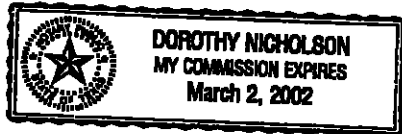
Kay Mary Larson

(Acknowledgments Follow)

STATE OF TEXAS

COUNTY OF BEXAR

On this the 24th day of May, 2001, there appeared before me the above named Todd N Cecil, the Vice President-Real Estate of Central Oregon & Pacific Railroad, Inc , a Delaware corporation and he/she acknowledged that the foregoing instrument was executed on behalf of said corporation and that said instrument was his/her voluntary act and deed.



Dorothy Nicholson
Dorothy Nicholson
Notary Public for Texas
My Commission expires 3/2/2002

STATE OF OREGON

COUNTY OF LANE

This instrument was acknowledged before me this _____ day of May, 2001, by Kay Mary Larson

Notary Public for Oregon

My Commission Expires: _____

STATE OF OREGON

COUNTY OF LANE

This instrument was acknowledged before me this _____ day of May, 2001, by Larry M. Larson.

Notary Public for Oregon

My Commission Expires: _____

After Recording Return to.

Until a change is requested, all tax statements shall be sent to the following address

MasterBrand Cabinets, Inc

OREGON STATUTORY QUITCLAIM DEED

CENTRAL OREGON & PACIFIC RAILROAD, INC., a Delaware corporation, Grantor, releases and quitclaims to MASTERBRAND CABINETS, INC , Grantee, all right, title and interest in and to the real property described on Exhibit A, attached hereto and by reference made a part hereof (hereinafter referred to as "Premises").

Subject to and excepting:

1. The following standard exceptions contained in title insurance binders:
 - 1.1 Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public record; proceedings by a public agency which may result in taxes or assessments, or notions of such proceedings, whether or not shown by the records of such agency or by the public record.
 - 1.2 Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof
 - 1.3 Easements, or claims of easement, not shown by the public records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
 - 1.4 Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
 - 1.5 Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose.
2. All existing roads and public utilities; reservations, exceptions, easements and restrictions of record; and any applicable laws.
3. Reservations made by Southern Pacific Transportation Company in its Quitclaim Deed to Central Oregon & Pacific Railroad, Inc , dated December 31, 1994, which was recorded in Josephine County Official Records as Document No 95-00077, and corrected by Document 97-10013.

4. RESERVING unto Grantor, its lessees, designees, successors, and assigns, an exclusive easement to continue using the Premises for a period of ninety (90) days from the date hereof for the purpose of removing all rails, rail switches and railroad ties from the Premises.

Tax Account Number: 93-1151074

The true consideration for this conveyance is \$180,000.00.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30 930.

DATED this 15th day of December, 2000.

CENTRAL OREGON & PACIFIC
RAILROAD, INC.

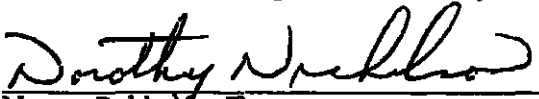
By: 

Todd N. Cecil, Vice President-Real Estate

STATE OF TEXAS)
) ss.
County of Bexar

The foregoing instrument was acknowledged before me, a notary public in and for the County of Bexar, State of Texas, this 15th day of December, 2000, by Todd N. Cecil, known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Vice President-Real Estate, Central Oregon & Pacific Railroad, Inc., and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors




Notary Public for Texas
My Commission Expires: 3/2/2002

Cascade Escrow
811 Willamette Street
Eugene, OR 97407

After Recording Return to:

John C. Watkinson
Watkinson Laird Rubenstein
Lashway & Baldwin, P.C.
101 E. Broadway, Suite 200
Eugene, OR 97401-3114

Send Tax Statements To:

1/NO CHANGE
FROM TO CASCADE TITLE CO

DIVISION OF CHIEF DEPUTY CLERK
LANE COUNTY DEEDS AND RECORDS



66.00

00038699200027619005

2000027619

9:32:25 AM 05/16/2000

RPR DEED 1 - 5 CASHIER 08
0.00 25.00 11.00 10.00 20.00

FROM TO CASCADE TITLE CO PROPERTY LINE ADJUSTMENT DEED

222526/EU00-9053 MMM

The parties to this transfer are CENTRAL OREGON & PACIFIC RAILROAD, INC., a Delaware corporation, Grantor, and TERRITORIAL WEST, L.L.C., an Oregon limited liability company, Grantee. The parties are joining in this transfer to adjust the property line along their shared boundary to comply with the City of Veneta Land Use Regulations and the provisions of ORS 92.190(4).

Grantor received title to its property (railroad right-of-way for the Coos Bay Branch) by that certain Quitclaim Deed recorded January 3, 1995, Reel 2026R, Reception No. 9500017, Lane County Official Records. The legal description of that portion of Grantor's property affected by, and prior to, this property line adjustment is contained in that deed recorded October 16, 1911, in Book 94, Page 54, Lane County Oregon Deed Records.

Grantee received title to its property by that certain Warranty Deed recorded September 2, 1998, Reel 2459R, Reception No. 9870096, Lane County Official Records, and the legal description of the Grantee's property prior to this property line adjustment is contained therein.

For the purpose of accomplishing this property line adjustment, Grantor does hereby release and quitclaim to Grantee that portion of Grantor's property described in attached Exhibit A (Subject Property).

The legal description of Grantor's property after this property line adjustment is as follows:

That strip of land of variable width conveyed to Willamette Pacific Railroad Company by deed recorded October 16, 1911, in Book 94, Page 54, Lane County Oregon Deed Records, excepting therefrom that parcel of land described in Exhibit A.

The legal description of Grantee's property after this property line adjustment is contained in attached Exhibit B.

The portion of the legal description that depicts the new adjusted property line between Grantor's property and Grantee's property is underlined on Exhibit A

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY USES

Grantee, by acceptance of this Deed, covenants that it, and its successors and assigns, shall maintain the existing drainage on the Subject Property in such a manner as to not impair adjacent railroad right-of-way drainage and to not redirect or increase the quantity or velocity of surface water run off or any streams into Grantor's drainage system or upon the right-of-way. If the Subject Property or existing drainage are modified or improved, Grantee agrees to construct and maintain, in accordance with applicable statutes, ordinances, building and development codes, an adequate drainage system from the Subject Property to the nearest public or non-Grantor owned drainage or storm sewer system, in order to prevent the discharge of roof, surface, stream and other drainage waters from the Subject Property upon the railroad right-of-way.

By acceptance of this Deed, Grantee covenants that Grantor shall not be required to erect or maintain any fences, railings or guard rails along the boundary lines between the Subject Property and the adjacent land of Grantor or any other company affiliated with Grantor, be liable for or required to pay any part of the cost or expense of erecting or maintaining such fences, railings or guard rails, or any part thereof, or be liable to Grantee for any loss or injury that may result by reason of the non-existence or the condition of any fences, railings or guard rails, or the absence thereof.

The true consideration for this conveyance is \$57,000

Dated this 12th day of May, 2000

Central Oregon & Pacific Railroad, Inc.

By Tam J. Reind

Title Vice President - Real Estate

Territorial West, L.L.C.

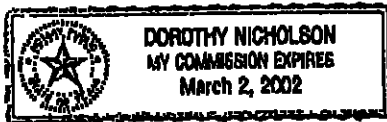
By Glenn B. Watters

Glenn B. Watters, Member

(Acknowledgments Follow)

STATE OF TEXAS)
) ss
County of Bexar)

On this 1st day of May, 2000, there appeared before me the above named Todd N. Court, the Vice President - Real Estate of Central Oregon & Pacific Railroad, Inc., a Delaware corporation, and he/she acknowledged that the foregoing instrument was executed on behalf of said corporation and that said instrument was his/her voluntary act and deed



Dorothy Nicholson
Notary Public for Texas
My Commission Expires 3/2/2002

STATE OF OREGON)
) ss
County of Lane)

This instrument was acknowledged before me this 15th day of May, 2000, by Glenn B Watters, as Member of Territorial West, LLC



Mendie M. Mayfield
Notary Public for Oregon
My Commission Expires: _____

| |
|---------------------------|
| After Recording Return to |
| |
| |
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| |

| |
|--|
| Until a change is requested, all tax statements shall be sent to the following address |
| <u>Medford Urban Renewal Agency</u> |
| |
| |
| |

OREGON STATUTORY QUITCLAIM DEED

CENTRAL OREGON & PACIFIC RAILROAD, INC., a Delaware corporation, Grantor, releases and quitclaims to MEDFORD URBAN RENEWAL AGENCY, Grantee, all right, title and interest in and to the real property described on Exhibit A, attached hereto and by reference made a part hereof (hereinafter referred to as "Premises")

Subject to and excepting:

1. The following standard exceptions contained in title insurance binders.
 - 1.1 Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public record; proceedings by a public agency which may result in taxes or assessments, or notions of such proceedings, whether or not shown by the records of such agency or by the public record.
 - 1.2 Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof
 - 1.3 Easements, or claims of easement, not shown by the public records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
 - 1.4 Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
 - 1.5 Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose.
2. All existing roads and public utilities; reservations, exceptions, easements and restrictions of record; and any applicable laws.
3. Reservations made by Southern Pacific Transportation Company in its Quitclaim Deed to Central Oregon & Pacific Railroad, Inc, dated December 31, 1994, which was recorded in Jackson County Official Records on January 3, 1995, as Document No. 95-00050.
4. Grantee, by the acceptance hereof, hereby covenants that it, its successors, heirs, legal representatives and assigns, shall maintain the existing drainage on the

Premises in such a manner as to not impair adjacent railroad right-of-way drainage and to not redirect or increase the quantity or velocity of surface water runoff or any streams into said Grantor's drainage system or upon the right-of-way or other lands and facilities of Grantor. If the Premises or existing drainage are modified or improved, Grantee agrees to construct and maintain, in accordance with all applicable statutes, ordinances, building and subdivision codes, covenants and restrictions, an adequate drainage system from the Premises to the nearest public or non-Grantor owned drainage or storm sewer system, in order to prevent the discharge of roof, surface, stream and other drainage waters upon said right-of-way or upon other adjacent lands and facilities of Grantor. This covenant shall run with the Premises, and shall be binding upon the successors and assigns of Grantee.

5. Grantee, by the acceptance hereof, hereby covenants and agrees with Grantor that Grantor shall not: (1) be required to erect or maintain any fences, railings or guard rails along any boundary lines between the Premises and the adjacent land(s) of Grantor or of any other company affiliated with Grantor; or (2) be liable for or required to pay any part of the cost or expense of erecting or maintaining such fences, railings or guard rails, or any part hereof. Grantee covenants and agrees that it shall erect and forever maintain a fence along the northern boundary of the Premises, said fence(s) to be subject to the approval of Grantor's General Manager. This covenant shall run with the Premises, and shall be binding upon the successors and assigns of Grantee.
6. RESERVING unto Grantor, and its lessees, designees, successors, and assigns, the ownership of all existing signal and communications equipment, crossing warning and protection devices, and other ancillary facilities located above, below and upon the Premises (hereinafter the "Equipment"), along with an exclusive easement for the operation, use, maintenance, repair, removal, and all additional actions related to the existence of the Equipment.
7. RESERVING unto Grantor, its lessees, designees, successors, and assigns, an exclusive easement to continue using the Premises for a period of ninety (90) days from the date hereof for the purpose of removing all rails, rail switches and railroad ties from the Premises.

Tax Account Number: _____

The true consideration for this conveyance is \$545,870.00.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

DATED this 22nd day of December, 1998

CENTRAL OREGON & PACIFIC
RAILROAD, INC.

By. Todd N. Cecil
Todd N. Cecil, Director-Real Estate
RailTex, Inc., as agent

STATE OF TEXAS)
) ss.
County of Bexar)

The foregoing instrument was acknowledged before me, a notary public in and for the County of Bexar, State of Texas, this 22nd day of December, 1998, by Todd N Cecil, known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Director-Real Estate, RailTex, Inc , as agent for Central Oregon & Pacific Railroad, Inc., and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.



Dorothy Nicholson
Notary Public for Texas
My Commission Expires. 3/2/2002

QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That **CENTRAL OREGON & PACIFIC RAILROAD, INC.**, a Delaware corporation, hereinafter called "Grantor," for the consideration hereinafter stated, does hereby release and quitclaim unto **FRAN MAR COMPANY**, a limited partnership, with an address of 39560 Stevenson Place, Suite 118, Fremont, California 94539, hereinafter called "Grantee," all of its right, title and interest in and to that certain real property situated in the City of Grants Pass, County of Josephine, State of Oregon, as more particularly described in "Exhibit A" attached hereto and hereby made a part hereof (the "Premises"), subject to all existing roads and public utilities, and reservations, exceptions, and restrictions of record.

And, more specifically, subject to reservations made by Southern Pacific Transportation Company in its deed to Grantor dated December 31, 1994 which was recorded in Josephine County Official as Document 97-00077, as corrected by Document No 10013.

Reserving unto Grantor, and its lessees, licensees, designees, successors, and assigns, the ownership of all existing railroad-related signal and communications equipment, crossing warning and protection devices, and other ancillary facilities located above, below and upon the Premises (hereinafter the "Equipment"), along with a non-exclusive easement for the operation, use, maintenance, repair, removal, and all additional actions related to the existence of the Equipment

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PREMISES DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PREMISES SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Grantee, by the acceptance hereof, hereby covenants and agrees with Grantor that Grantor shall not be required by Grantee to erect or maintain any fences, railings or guard rails along any boundary lines between the Premises and the adjacent land(s) of Grantor or of any other company affiliated with Grantor; or be liable for or required to pay any part of the cost or expense of erecting or maintaining such fences, railings or guard rails, or any part hereof.

Grantee, by the acceptance hereof, hereby covenants that it, its successors, heirs, legal representatives or assigns, shall maintain the existing drainage on the Premises in such a manner as to not impair adjacent railroad right-of-way drainage and to not redirect or increase the quantity or velocity of surface water runoff or any streams into said Grantor's drainage system or upon the right-of-way or other lands and facilities of Grantor. If said Premises or existing drainage are modified or improved, Grantee agrees to construct and maintain, in accordance with all applicable statutes, ordinances, building and subdivision codes, covenants and restrictions, an adequate drainage system from the Premises to the nearest public or non-Grantor owned drainage or storm sewer system, in order to prevent the discharge of roof, surface, stream and other drainage waters upon said right-of-way or upon other adjacent lands and facilities of Grantor. This covenant shall run with the Premises, and shall be binding upon the successors and assigns of Grantee.

TO HAVE AND TO HOLD the same unto Grantee and Grantee's heirs, successors and assigns forever.

The true and actual consideration paid for the transfer, stated in terms of dollars, is **SEVEN HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$735,000.00)**. (ORS 93.030)

In construing this Deed and where the context so requires, the singular includes the plural, and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and individuals. The provisions of this deed shall be construed under the laws of the State of Oregon

IN WITNESS WHEREOF, the Grantor has executed this instrument this 29th day of September, 1998; if a corporate Grantor, it has caused its name to be signed and its seal affixed by its officers duly authorized thereto by order of its Board of Directors

GRANTOR: CENTRAL OREGON & PACIFIC RAILROAD, INC.

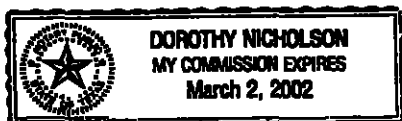
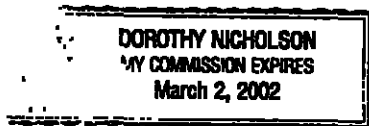
By: Todd N. Cecil, Director-Real Estate
RailTex, Inc , as agent

STATE OF TEXAS)
) ss.
COUNTY OF BEXAR)

On this 29th day of September, in the year 1998, before me, Dorothy Nicholson, a notary public in and for the County of Bexar, State of Texas, personally appeared Todd N. Cecil, known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) who executed the within instrument as Director-Real Estate, RailTex, Inc., as agent for Central Oregon & Pacific Railroad Company, Inc., therein named and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

Dorothy Nicholson
Notary Public

My Commission Expires: 3/2/2002



QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That CENTRAL OREGON & PACIFIC RAILROAD, INC., a Delaware corporation, hereinafter called "Grantor," for the consideration hereinafter stated, does hereby quit-claim unto G & I INVESTMENTS, an Oregon general partnership individual, with an address of 580 Southeast Oak Street, Roseburg, Oregon 97470, hereinafter called "Grantee," all of that certain real property situated in the City of Roseburg, County of Douglas, State of Oregon, as more particularly described in the Exhibit "A" attached and hereby made a part hereof, (the "Premises"), subject to all covenants, conditions, restrictions, exceptions, easements, rights-of-way, rights-of-access, agreements, reservations, encumbrances, liens and other matters as the same may be of record; any matters which would be disclosed by survey, investigation or inquiry, and any tax, assessment or other governmental lien against the Premises.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PREMISES DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PREMISES SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30 930

Grantee acknowledges that Grantor is operating (and will continue to operate) a railroad upon its adjoining property, and recognizes that such operation may create some noises and vibrations affecting the Premises. Grantee accepts the Premises subject to such noises and vibrations, and hereby covenants to release Grantor from all liability, cost and expense resulting therefrom. This covenant shall run with the Premises, and shall be binding upon the successors and assigns of Grantee.

Grantee, by the acceptance hereof, hereby covenants and agrees with Grantor that Grantor shall not be required to erect or maintain any fences, railings or guard rails along any boundary lines between the Premises and the adjacent land(s) of Grantor or of any other company affiliated with Grantor; or be liable for or required to pay any part of the cost or expense of erecting or maintaining such fences, railings or guard rails, or any part hereof, or be liable for any damage, loss or injury that may result by reason of the non-existence or the condition of any fences, railings or guard rails or the absence thereof. Grantee covenants and agrees that it shall erect and forever maintain a fence along the western boundary of the Premises, said fence or barricade to be subject to the approval of Grantor's General Manager. This covenant is for the benefit of Grantor's adjoining land, and shall run with the Premises and be binding upon the successors and assigns in title of Grantee.

Grantee, by the acceptance hereof, hereby covenants that it, its successors, heirs, legal representatives or assigns, shall maintain the existing drainage on the Premises in such a manner as to not impair adjacent railroad right-of-way drainage and to not redirect or increase the quantity or velocity of surface water runoff or any streams into said Grantor's drainage system or upon the right-of-way or other lands and facilities of Grantor. If said Premises or existing drainage are modified or improved, Grantee agrees to construct and maintain, in accordance with all applicable statutes, ordinances, building and subdivision codes, covenants and restrictions, an adequate drainage system from the Premises to the nearest public or non-Grantor owned drainage or storm sewer system, in order to prevent the discharge of roof, surface, stream and other drainage waters upon said right-of-way or upon other adjacent lands and facilities of Grantor. This covenant shall run with the Premises, and shall be binding upon the successors and assigns of Grantee.

RESERVING unto Grantor, and its lessees, licensees, designees, successors, and assigns, the ownership of all existing signal and communications equipment (including, but not limited to, towers, underground and above ground cables, microwave dishes, antennas, etc), crossing warning and protection devices, and other ancillary facilities located above, below and upon the Premises (hereinafter the "Equipment"), along with an exclusive easement for the operation, use, maintenance, relocation, repair, removal, and all additional actions related to the existence of the Equipment.

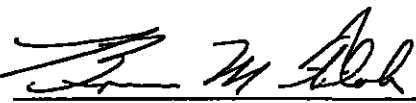
TO HAVE AND TO HOLD the same unto Grantee and Grantee's heirs, successors and assigns forever.

The true and actual consideration paid for the transfer, stated in terms of dollars, is TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) (ORS 93.030)

In construing this Deed and where the context so requires, the singular includes the plural, and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and individuals

IN WITNESS WHEREOF, the Grantor has executed this instrument this 16th day of December, 1996, if a corporate Grantor, it has caused its name to be signed and its seal affixed by its officers duly authorized thereto by order of its Board of Directors.

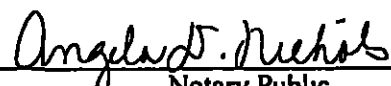
GRANTOR: CENTRAL OREGON & PACIFIC
RAILROAD, INC.

By: 
Bruce M. Flohr, President

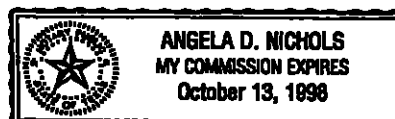
Attest 
Laura D. Davies, Secretary

STATE OF TEXAS)
) ss.
COUNTY OF BEXAR)

On this 16th day of December, in the year 1996, before me, Angela D. Nichols, a notary public in and for the County of Bexar, State of Texas, personally appeared Bruce M. Flohr known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) who executed the within instrument as President, therein named and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.


Notary Public

My Commission Expires: 10/13/98



BARGAIN AND SALE DEED

KNOW ALL MEN BY THESE PRESENTS, That **CENTRAL OREGON & PACIFIC RAILROAD, INC.**, a Delaware corporation, hereinafter called "Grantor," for the consideration hereinafter stated, does hereby convey unto **RODGER S. WHIPPLE**, an individual, with an address of P.O. Box 1537, Jacksonville, Oregon 97530, hereinafter called "Grantee," all of that certain real property situated in the City of Medford, County of Jackson, State of Oregon, as more particularly described in the Exhibit "A" attached and hereby made a part hereof, (the "Premises"), subject to all covenants, conditions, restrictions, exceptions, easements, rights-of-way, rights-of-access, agreements, reservations, encumbrances, liens and other matters as the same may be of record; any matters which would be disclosed by survey, investigation or inquiry; and any tax, assessment or other governmental lien against the Premises.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PREMISES DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PREMISES SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Grantee acknowledges that Grantor is operating (and will continue to operate) a railroad upon its adjoining property, and recognizes that such operation may create some noises and vibrations affecting the Premises. Grantee accepts the Premises subject to such noises and vibrations, and hereby covenants to release Grantor from all liability, cost and expense resulting therefrom. This covenant shall run with the Premises, and shall be binding upon the successors and assigns of Grantee.

Grantee, by the acceptance hereof, hereby covenants and agrees with Grantor that Grantor shall not: be required to erect or maintain any fences, railings or guard rails along any boundary lines between the Premises and the adjacent land(s) of Grantor or of any other company affiliated with Grantor; or be liable for or required to pay any part of the cost or expense of erecting or maintaining such fences, railings or guard rails, or any part hereof; or be liable for any damage, loss or injury that may result by reason of the non-existence or the condition of any fences, railings or guard rails or the absence thereof. Grantee covenants and agrees that it shall erect and forever maintain a fence along the southern boundary of the Premises, said fence or barricade to be subject to the approval of Grantor's General Manager. This covenant is for the benefit of Grantor's adjoining land, and shall run with the Premises and be binding upon the successors and assigns in title of Grantee.

Grantee, by the acceptance hereof, hereby covenants that it, its successors, heirs, legal representatives or assigns, shall maintain the existing drainage on the Premises in such a manner as to not impair adjacent railroad right-of-way drainage and to not redirect or increase the quantity or velocity of surface water runoff or any streams into said Grantor's drainage system or upon the right-of-way or other lands and facilities of Grantor. If said Premises or existing drainage are modified or improved, Grantee agrees to construct and maintain, in accordance with all applicable statutes, ordinances, building and subdivision codes, covenants and restrictions, an adequate drainage system from the Premises to the nearest public or non-Grantor owned drainage or storm sewer system, in order to prevent the discharge of roof, surface, stream and other drainage waters upon said right-of-way or upon other adjacent lands and facilities of Grantor. This covenant shall run with the Premises, and shall be binding upon the successors and assigns of Grantee.

RESERVING unto Grantor, and its lessees, licensees, designees, successors, and assigns, an exclusive easement to continue occupying and using the Premises for any and all railroad purposes for a period of ninety (90) days subsequent to the date of this deed.

TO HAVE AND TO HOLD the same unto Grantee and Grantee's heirs, successors and assigns forever.

The true and actual consideration paid for the transfer, stated in terms of dollars, is TWO HUNDRED SEVENTY SIX THOUSAND DOLLARS (\$276,000.00). (ORS 93.030)

In construing this Deed and where the context so requires, the singular includes the plural, and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and individuals.

IN WITNESS WHEREOF, the Grantor has executed this instrument this 21st day of December, 1995; if a corporate Grantor, it has caused its name to be signed and its seal affixed by its officers duly authorized thereto by order of its Board of Directors

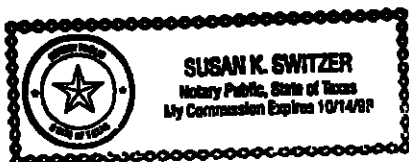
GRANTOR: CENTRAL OREGON & PACIFIC
RAILROAD, INC.

By: 
Bruce M. Flohr, President

Attest: 
H.M. Irvin III, Secretary

STATE OF TEXAS)
) ss.
COUNTY OF BEXAR)

On this 21st day of December, in the year 1995, before me Susan K. Switzer, a notary public in and for the County of Bexar, State of Texas, personally appeared Bruce M. Flohr known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) who executed the within instrument as President, therein named and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.



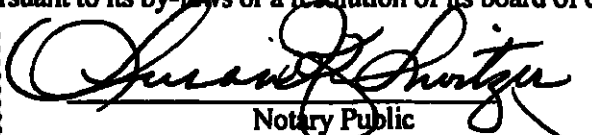

Notary Public
My Commission Expires: 10-14-98

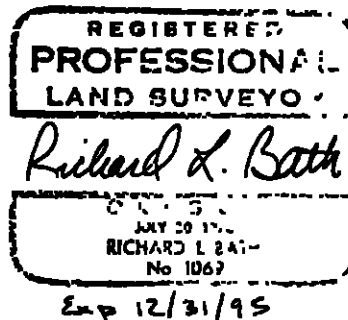
EXHIBIT A
(PAGE 1 OF 1)

August 11, 1995

RODGER WHIPPLE
Medford Train Depot
Proposed Legal Description

Commencing at the point of intersection of the southeasterly right-of-way line of Fourth Street (60 feet wide) with the southwesterly right-of-way line of Front Street (50 feet wide) located in the City of Medford, Jackson County, Oregon, thence South 35°30'00" East, along said southwesterly right-of-way line of Front Street, 175.00 feet to the **true point of beginning**; thence continue South 35°30'00" East, along said right-of-way line, 305.90 feet to the northeasterly corner of the tract described in deed recorded as No. 93-20139 of the Official Records of Jackson County, Oregon; thence South 54°30'00" West, along the northwesterly boundary of said described tract, 78.10 feet; thence North 35°30'00" West, parallel with aforesaid southwesterly right-of-way line of Front Street, 305.90 feet to a point that bears South 54°30'00" West of the true point of beginning; thence North 54°30'00" East 78.10 feet to the true point of beginning.

Containing 23,891 square feet, more or less.



HARDEY ENGINEERING & ASSOC., INC.
Richard L. Bath, RLS No. 1069
P.O. Box 1625
Medford, OR 97501-0124
(503) 772-6880 phone
(503) 772-9573 fax

Hand-drawn plat map of Tax Lot 11700. The lot is a rectangle with dimensions 125.00' by 70.00'. The front boundary is 125.00' and the back boundary is 70.00'. The left boundary is 30' and the right boundary is 30'. The lot is situated between a street on the left and a railroad on the right. The street is labeled "E FOURTH ST." and the railroad is labeled "E RAIL". The front boundary is labeled "FRONT" and "720.90". The back boundary is labeled "16.00" and "15'".

TNC

98-56724

QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That CENTRAL OREGON & PACIFIC RAILROAD, INC., a Delaware corporation, hereinafter called "Grantor," for the consideration hereinafter stated, does hereby release and quitclaim unto NOEL A. LESLEY AND MARY C. LESLEY, husband and wife, with an address of 2630 Siskiyou Boulevard, Ashland, Oregon 97520, hereinafter called "Grantee," all of its right, title and interest in and to that certain real property situated in the City of Phoenix, County of Jackson, State of Oregon, as more particularly described in "Exhibit A", which exhibit is attached hereto and hereby made a part hereof, (the "Premises"), subject to all covenants, leases, licenses, conditions, restrictions, exceptions, easements, rights-of-way, rights-of-access, agreements, reservations, encumbrances, liens and other matters whether of record or not; any matters which would be disclosed by survey, investigation or inquiry; and any tax, assessment or other governmental lien against the Premises.

And, more specifically, subject to reservations made by Southern Pacific Transportation Company in its deed to Grantor dated December 31, 1994 which was recorded in Jackson County Official Records in Deed Book 95-00050 on January 3, 1995.

~~RESERVING unto Grantor, and its lessees, licensees, designees, successors, and assigns, the ownership of all existing signal and communications equipment, crossing warning and protection devices, related wires, cables and connections, and other ancillary facilities or other railroad-related facilities located above, below and upon the Premises (hereinafter the "Equipment"), along with an exclusive easement for access to the Premises for the operation, use, maintenance, relocation, repair, and/or removal of the Equipment.~~

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PREMISES DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PREMISES SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Grantee, by the acceptance hereof, hereby covenants that it, its successors, heirs, legal representatives or assigns, shall maintain the existing drainage on the Premises in such a manner as to not impair adjacent railroad right-of-way drainage and to not redirect or increase the quantity or velocity of surface water runoff or any streams into said Grantor's drainage system or upon the right-of-way or other lands and facilities of Grantor. If said Premises or existing drainage are modified or improved, Grantee agrees to construct and maintain, in accordance with all applicable statutes, ordinances, building and subdivision codes, covenants and restrictions, an adequate drainage system from the Premises to the nearest public or non-Grantor owned drainage or storm sewer system, in order to prevent the discharge of roof, surface, stream and other drainage waters upon said right-of-way or upon other adjacent lands and facilities of Grantor. This covenant shall run with the Premises, and shall be binding upon the successors and assigns of Grantee.

TO HAVE AND TO HOLD the same unto Grantee and Grantee's heirs, successors and assigns forever.

The true and actual consideration paid for the transfer, stated in terms of dollars, is ONE HUNDRED TWENTY-FIVE THOUSAND (\$125,000.00). (ORS 93.030)

In construing this Deed and where the context so requires, the singular includes the plural, and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and individuals. The provisions of this deed shall be construed under the laws of the State of Oregon.

MAIL TAX STATEMENTS TO:

GRANTEES

2630 Siskiyou Blvd.
Ashland, OR 97520

98-56724

EXHIBIT A

A parcel of land, lying in the Northeast Quarter of Section 16 of Township 38 South, Range 1 West, Willamette Meridian, Jackson County, Oregon, said parcel being more particularly described as follows:

"Parcel 1" as shown on the survey plat which was filed with the Jackson County Surveyor as "Partition Plat No. P-74-1998" on November 27, 1998, said survey plat being in County Surveyor File No. 15992, said parcel of land containing 82,879 square feet, and including that real property conveyed to Grantor in that certain Oregon Statutory Quitclaim Deed which is recorded in Jackson County land records as Document No. 98-53913.

Jackson County, Oregon
Recorded
OFFICIAL RECORDS

DEC 07 1998

2:10 PM
[Signature]
COUNTY CLERK

EXHIBIT 7

T.C. Memo. 2000-3

UNITED STATES TAX COURT

ESTATE OF WILLIAM BUSCH, DECEASED,
MARY DANA, EXECUTOR, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 16441-97.

Filed January 5, 2000.

Nickolas P. Tooliatos II and Erin Kvistad (specially
recognized), for petitioner.

Elizabeth L. Groenewegen and Rebecca T. Hill, for
respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

GERBER, Judge: Respondent determined that there should be
an increase in the reported value of certain real property
resulting in a \$1,974,500 Federal estate tax deficiency.
Petitioner disagrees with respondent's value determination and

also contends that the value reported on the estate tax return was overstated and that the estate should be entitled to a refund due to an overpayment of estate tax. We consider here the fair market value of the realty and the applicability and/or amount of any fractional discount.

FINDINGS OF FACT-

William Busch (decedent) a resident of California, died on February 26, 1993, at the age of 98. The executor and personal representative of the estate, Mary E. Dana, resided in California at the time the petition was filed. In a timely filed estate tax return, decedent's one-half interest in 90.74 acres of real property (Busch property) was reported at a value of \$3,810,000. The reported value was based on an appraisal report prepared by DeVoe & Associates (DeVoe), which was attached to the estate tax return. DeVoe, based on comparables of residential development properties, concluded that the fair market value for the entire fee simple interest was \$12,700,000 and discounted, by 40 percent, decedent's one-half interest (\$6,350,000) to arrive at the \$3,810,000 return value.

Based on the amounts that had been reported by the estate, respondent assessed \$1,674,465 in estate taxes. The estate paid \$300,000 with the estate's extension to file, and an additional \$75,000 was paid after respondent assessed the tax based on the

¹ The parties' stipulation of facts and exhibits are incorporated by this reference.

return, leaving an unpaid balance in the assessed estate tax liability of \$1,299,465. The estate requested and received extensions of time within which to pay estate tax under section 6161.² After examination of the estate tax return, respondent determined that the fair market value of decedent's one-half interest in the Busch property was \$7,400,000, or \$3,590,000 greater than the amount reported by the estate.

The Busch property was improved by three dwelling units and farm equipment storage facilities. Decedent was born in 1894 and resided on the property throughout his life. Decedent originally coowned the property with his brother, but at the time of decedent's death, his coowner was a trust established by Velma Busch (decedent's sister-in-law) who was then 97 years old. Velma Busch died during October 1996. Prior to his death, decedent and his coowner(s) were generally not interested in selling the property. Decedent left his one-half interest in the Busch property to Mary and Eugene Dana, decedent's niece and her husband.

The Busch property was located in unincorporated Alameda County, adjoining the city of Pleasanton. Historically, the property had been used for agricultural purposes and was so zoned by Alameda County. Alameda County had a 100-acre agricultural

² All section references are to the Internal Revenue Code in effect as of the date of decedent's death, and all Rule references are to the Tax Court Rules of Practice and Procedure, unless otherwise indicated.

property minimum and had denied a 1982 request to split the Busch property into two separate agricultural use parcels. Although the Busch property was not within Pleasanton's city limits, it was within its sphere of influence, and future development would be dependent upon annexation into Pleasanton. Under Pleasanton's General Plan in effect February 1993, most of the Busch property was designated as medium density residential and a small portion was designated high density residential. The Busch property originally included 25 additional acres on its western side that were sold and used for agricultural purposes and, ultimately, the 25 acres were developed into a mixed residential neighborhood.

During 1986, a 16.66-acre portion of the Busch property was sold to Pleasanton for use as a maintenance and operations facility for \$1,718,620 or approximately \$103,000 per acre. During 1987, the Pleasanton School District made an offer to purchase approximately 20 acres of the Busch property for about \$100,000 per acre. During 1993 the School District was again looking for a future (1995-96) school site. In an internal school district 1991 planning document it was recommended that a 21.5-acre parcel of the Busch property be considered, and it was estimated that the value was \$250,000 per acre. The school district normally hires a consultant to provide a fair market value of land in which the district has an interest. In 1993, the school district was also looking for a maintenance and operations facility. In connection with its search for a site,

the School District was provided a \$175,000-per-acre estimate of the value for the Busch property.

After decedent's death in February 1993, the estate fiduciary began consideration of the development of the Busch property. In March 1993, the fiduciary's legal counsel, who was experienced in processing land through the entitlement process, contacted a civil engineer to report on the potential use of the Busch property for a residential subdivision. The engineer submitted a draft preliminary site analysis on July 3, 1993. The draft outlined the challenges and difficulties that could be encountered in development, including the evolving political climate in Pleasanton. A final report was submitted during August 1993.

During January 1994, the fiduciary's legal counsel sent nine letters to potential purchasers of the Busch property, inviting their inquiries. Eight of the letter recipients were involved in residential subdivision and/or development. The ninth letter was sent to a local church's site committee that had expressed an interest in the Busch property. The counsel had discussions with the school district and several of the developers concerning the sale of the property. Four of the developers sent letters indicating an intent to buy or option, and of their interest in acquiring the Busch property. Because the envisioned transaction would be one where the buyer/developer would essentially become a partner of the estate, the fiduciary's legal counsel sought to

find a match with a developer that understood the politics of Pleasanton and the entitlement process. He recommended that the offer of Ponderosa Homes (Ponderosa) be accepted.

By a February 25, 1994, letter, Ponderosa presented a letter of intent to option the Busch property for 36 months or 60 months after governmental approval, for an exercise price of \$12,275,000 or \$139,500 per acre (using 88 acres as the base). Ponderosa offered \$5 million down and \$7,275,000 due in two equal payments, one due in 18 months and the other due 30 months after escrow. Ponderosa agreed to pay a nonrefundable \$10,000 per month for its option until the sale closed, with no crediting of these payments to the final price.

Ponderosa, with about 25 years of residential development experience, had 75 employees, 6 to 10 active projects, and began 1 to 2 new projects each year. In its business history, Ponderosa experienced only a few projects that it was forced to abandon. As of January 1994, Ponderosa had built about 1,000 homes in the Pleasanton area and was familiar with the city's entitlement process. Ponderosa was aware of the referendum against other projects (the Kottlinger Hills project and controversy surrounding the Pleasanton Ridge development), and the political climate in Pleasanton, but Ponderosa believed that the Busch property project could work and bid on it.

In addition to the option agreement by Ponderosa, several other developers made offers as follows: (a) Mission Peaks Homes

offered to purchase for approximately \$17 million, but the final price would depend upon the number of residential lots approved for building; (b) Braddock & Logan offered \$150,000 per acre; (c) Greystone Homes considered dividing into 5 parcels, each consisting of about 18 acres. After negotiations with several developers, a two-stage closing was offered to Ponderosa, under which 44 acres would close in 36 months, and 44 acres would close no more than 60 months from the date of the agreement. It was expected that Pleasanton would scrutinize any development plans for Busch property and that necessary approval would take as long as 2 to 3 years. The offers from developers, including the one from Ponderosa, were not to be closed in less than 90 days and anticipated that the property would be approved by Pleasanton for residential development.

On June 30, 1994, the coowners of Busch property entered into an Agreement of Purchase and Sale with Ponderosa, at a base price of \$150,000 per acre. After the coowners of Busch property each retained a 1-acre building lot, the remaining property was to be broken into two portions, approximately 44 acres each, and delineated as the "Dana Property" (Dana portion) and the "Busch Property" (Busch portion). The agreement was designed to provide for separate closing for each portion, with the Busch portion closing last. The purchase price was variable depending on time and/or the number of building lots approved. The price was to increase 9 percent annually from the first closing to either the

second closing or June 30, 2000, whichever occurred first. The per lot price was also to increase \$50,000 for each dwelling lot approved in excess of 250 with 616 dwelling units stated as the outside limit. Accordingly, the combined 88-acre price could vary from a low of \$13,200,000 to a high of \$31,500,000. In addition to the purchase price, Ponderosa paid \$100,000 down and was to pay \$10,000 per month with respect to the Dana portion, and the payments were to stop at the time of the first closing with no credit being allowed against the purchase price. With respect to the Busch portion, Ponderosa was to pay \$5,000 every 30 days beginning after the first closing until the earliest of the date of the second closing or June 30, 2000. The \$5,000 payments were to be applied to the purchase price.

The parties to the June 30 agreement expected that the first closing (to occur no later than June 30, 1997) would complete the transfer of the Dana portion and the second closing (to occur no later than December 30, 2000) would complete the transfer of the Busch portion. The parties were also aware that the necessary approval for development would take time and money, and Ponderosa expected to spend up to \$250,000 in seeking approval to develop. Ponderosa had estimated that on a "fast-track" basis, the entitlement process would take 18 months. Ponderosa's practice was not to make an outright purchase but to option an interest in property for development. At the time of the June 30 agreement, the parties were aware that the Pleasanton city government and

the political environment were less receptive to residential development than it had been during the 1980's.

As of 1993, the Pleasanton mayor and two members of a five-member city council had taken a strong stance against further development and intended to, at very least, slow growth in Pleasanton. As an example, the Kottinger Hills project had been approved for development in late 1992, but surrounding homeowners petitioned for a referendum with respect to impact on local automobile traffic. In January 1993, the referendum was placed on the November 1993 local ballot, and the Kottinger Hills project failed to receive sufficient votes, causing the project to be discontinued. In addition, as of June 1992, the Pleasanton citizenry had also defeated the Pleasanton Ridge project by means of a ballot initiative. When the June 1994 agreement was executed and as of decedent's date of death, it was foreseeable that difficulties could be encountered in gaining approval for property development within the sphere of influence of Pleasanton.

As of 1994, Pleasanton had maintained the same General Plan that had been in effect since 1986. During 1994, Pleasanton was updating its General Plan, and at a March 1994 meeting, a Pleasanton's Planning Department employee indicated that the preferred number of lots for the Busch property was 375 or less. In April 1995, Ponderosa submitted a plan for 449 units on the Busch property. During 1995, Pleasanton's General Plan Steering

Committee approved a plan for 391 housing units on the Busch property. In 1997, in the face of neighborhood concerns about traffic patterns, the Planning Commission approved 360 housing units for the Busch property. In addition, a neighborhood committee (by a 7 to 1 vote) agreed to a plan for the Busch property containing 300 housing units.

Just prior to the June 30, 1997, closing date, the parties revised their agreement and entered into an Amended and Restated Agreement of Option to Purchase, which was effective June 1, 1997, and, accordingly, no closing occurred under the original option agreement. Under the amended agreement, the \$150,000 per-acre base price and the \$50,000 per unit in excess of 250 units remained the same. The amended agreement provided for a "Price Escalator" under which the purchase price for the Dana or Busch portions would increase by \$25,000 per month, beginning June 30, 1997, until the date of the first closing, scheduled for no later than January 5, 1998. The first closing under the amended agreement did not occur, and Ponderosa renewed the option agreement in March 1998.

Ponderosa presented a 360-unit site plan to the Pleasanton Planning Commission and received approval around the end of 1996. In early 1997, Ponderosa went to the city council, but it was not until December 2, 1997, that a 300-unit plan was adopted, and it was determined that the plan would not have significant adverse effects on the environment. On December 16, 1997, the city

council approved the rezoning of Busch property to a "Planned Unit Development--Medium Density Residential" and approved a 300-unit plan for development, conditional upon meeting numerous requirements involving design and home siting, architectural features, landscaping, construction of park, noise attenuation, building code compliance, creating a homeowners' association, fire code compliance, street construction, grading and drainage improvements, utilities and related matters. Ponderosa also agreed to provide Pleasanton 5-1/2 acres for use as a city corporation yard.

After approval of the plan, local citizens circulated a petition calling for a referendum involving traffic issues. In response to citizen concerns, Ponderosa disseminated materials attempting to show community benefits that would inure if the project went through. During January 1998 the referendum petition was filed, and the Pleasanton city council, with Ponderosa's approval, instead of addressing the question of a referendum or other alternative, decided to rescind the ordinance approving the Busch property plan.

Thereafter, a second amended agreement was entered into and became effective February 18, 1998. It called for an additional \$375,000 increase to the purchase price and increased the \$50,000 per unit over 250 unit amount to \$70,000 per unit. The Purchase Price Escalator was increased from \$25,000 to \$30,000 from February 18 until the closing. The second amended agreement had

a single February 17, 2001, closing date. Ponderosa, through this time, had paid nonrefundable payments (that were not to be applied to the purchase price) to the Busch property owners ranging from about \$500,000 to about \$1 million. As of the end of 1998, approval had not yet been received, and Ponderosa continued to experience difficulties in the process of attempting to gain approval for development.

OPINION

This case involves the valuation of real property for estate tax purposes. We must decide the value of decedent's one-half interest in the subject property. The estate reported a fee simple value of \$12,700,000 and discounted decedent's one-half interest (\$6,350,000) by 40 percent to reach the \$3,810,000 value reported as includable in the gross estate. The estate's valuation was predicated on the assumption that residential development is the highest and best use for the property. Respondent, after examining the estate's return, valued decedent's one-half interest in the property at \$7,400,000, also assuming that residential development is the highest and best use of the property. In the context of litigation, petitioner now contends that decedent's interest in the property should have been valued and included in the gross estate at \$680,000.³

³ We have held that a higher reported value is an admission, requiring an estate to produce "cogent proof that the reported values were erroneous." Estate of Hall v. Commissioner, 92 T.C. (continued...)

Petitioner argues that the value should be reduced because, as of the valuation date, it was unlikely that the property had the potential to be approved for residential development.

The parties disagree about how to handle the fact that approval for residential development had not been obtained and the probative weight, if any, that should be given to the terms of the June 1994 agreement. Although the June 1994 agreement was executed sufficiently close in time to the February 1993 date of death to be considered, it does not involve a contemporaneous payment of the contract proceeds. The agreement calls for payments at closings that would occur as much as 3 and 6 years in the future.

Petitioner contends that the \$150,000 per-acre agreement price was wholly contingent and dependent upon whether the developer (buyer) was able to obtain entitlement to subdivide the property for residential development; i.e., that Ponderosa was not a willing buyer of unapproved land. Conversely, respondent contends that the agreement is a contract for sale with a delayed closing and that the contract price represents what a willing buyer would be willing to pay in a cash or contemporaneous transaction, irrespective of whether the entitlements were to be obtained later.

³(...continued)
312, 337-338 (1989).

Property includable in a decedent's gross estate is to be returned at its fair market value generally as of the date of decedent's death. See sec. 2031(a); sec. 20.2031-1(b), Estate Tax Regs. Fair market value is "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts." United States v. Cartwright, 411 U.S. 546, 551 (1973); Estate of Hall v. Commissioner, 92 T.C. 312 (1989); Estate of Heckscher v. Commissioner, 63 T.C. 485, 490 (1975); sec. 20.2031-1(b), Estate Tax Regs.; sec. 25.2501-1, Gift Tax Regs. The willing seller and buyer are hypothetical rather than specific individuals or entities. See Estate of Bright v. United States, 658 F.2d 999, 1005-1006 (5th Cir. 1981).

The issue is factual and to be resolved from all the evidence and is, in great part, a question of judgment rather than mathematics. See Hamm v. Commissioner, 325 F.2d 934, 940 (8th Cir. 1963), affg. T.C. Memo. 1961-347; Duncan Indus., Inc. v. Commissioner, 73 T.C. 266 (1979). The parties, in support of their positions, have relied on their expert witnesses' reports concerning the subject real estate. In making our determination we may embrace or reject expert testimony if, in our judgment, either approach is appropriate. See Helvering v. National Grocery Co., 304 U.S. 282 (1938); Sammons v. Commissioner, 838 F.2d 330 (9th Cir. 1988). If an expert's opinion is of no

assistance to the Court, it will be given little weight. See Laureys v. Commissioner, 92 T.C. 101, 129 (1989).

In litigation, the parties have used different approaches to valuing the real property. Petitioner's expert used comparables to provide a cash sale price of land for residential development properties. Petitioner's expert then applied substantial discounts (as much as 80 percent), reducing an average of the comparable sales to a proposed value of \$25,000 per acre. Petitioner's trial expert's \$25,000 value is \$114,500 less than the \$139,500-per-acre value that had been reported on the estate's tax return. Respondent's expert was asked to derive a per-acre value based on the June 1994 agreement. After reaching a value based on the agreement, he discounted it to account for the delay in the closing of the transaction. Respondent uses the resulting value as an actual and comparable sale price for the Busch property. Although the two approaches reached disparate results, both are sourced in traditional cash sale principles involving the use of comparables and may be reconciled.

In addition to the experts called by the parties for trial, we must consider petitioner's appraiser's report attached to the estate tax return. We find analysis of that estate tax return appraisal necessary because its per-acre value (\$139,500) is more closely allied with contract price (\$150,000) and respondent's determination. In addition, the \$139,500 value is substantially

in excess of the \$25,000-per-acre value now advocated by petitioner.

Petitioner employed DeVoe, an appraiser, to ascertain the value of decedent's interest in the Busch property for purposes of reporting it on the estate's tax return. DeVoe's report was attached to the estate tax return and employed what he described as a "Market Data Approach" to value the property. That same approach has also been described as a comparable sales approach and involves the collecting of information on comparable and generally contemporaneous sales of like property in the general locale of the subject property.

DeVoe relied on nine sales with per-acre prices ranging from \$21,612 to \$445,872. One of the sales referenced by DeVoe was the 1986 sale of 16.66 acres of the Busch property to Pleasanton for \$103,158 per acre. In five of the nine sales, the approval to develop had been obtained and the per-acre price ranged from \$152,439 to \$445,872. In one situation, partial development approval had been obtained and the per-acre price (based on full acreage even though all of it was not usable) was \$53,043. The remaining two sales, for \$21,612 and \$29,520 per acre, concerned situations where no approval for development had been obtained. Other than the 1986 sale of the 16.66-acre Busch parcel, the sales used by DeVoe occurred during the period April 1989 through May 1993.

DeVoe refined his sales data universe to arrive at a per-acre range of \$103,158 to \$152,439. DeVoe relied on comparable values of properties that had been approved for development arriving at a \$139,500 per-acre value. DeVoe's approach was based on the premise that residential development would be the highest and best use and did not contain a discount for the fact that the Busch property had not been approved for development as of the valuation date. Applying the \$139,500 value times 90.74 acres, DeVoe calculated a \$12,700,000 value, which he divided in half to represent decedent's partial interest. Finally, DeVoe applied a 40-percent partial ownership discount to arrive at the \$3,810,000 value reported as part of decedent's gross estate.

Petitioner's trial expert, Norman Hulberg (Hulberg), like DeVoe, concluded that Busch property should be valued by means of the comparable sales method. Hulberg opined that the property's highest and best use was to develop it as residential property. Although Hulberg reached a \$25,000-per-acre value, sometime during November 1997 (prior to reaching the \$25,000 value), he had opined that the Busch property was worth \$100,000 per acre. During cross-examination, Hulberg explained that the decrease in the values he determined was attributable to facts that occurred both prior to and after November 1997 and that he had become aware of only after his November 1997 opinion. Hulberg's explanation was without specificity and did not adequately explain the reduction. We surmise that, in great part, Hulberg's

reduction was based on his changed view that the property would not likely have been approved for development as residential property.

Hulberg's opinion contained references to four Pleasanton area sales during the period June 1992 through December 1993 with a per-acre price range of \$80,071 to \$245,701. The sales he chose occurred prior to the June 1994 agreement, and the transaction concerning the Busch property was accordingly not factored into Hulberg's analysis. He then employed substantial discounts that he attributed to a lack of development approval and the political climate or conditions that may affect the possibility of approval. Hulberg compared the Busch property with situations where unimproved land was discounted by as much as 80 percent for lack of development approval and concluded that a 60-percent discount⁴ should be used with respect to the Busch property. Included in Hulberg's analysis, and presumably his discounts, were adjustments for the time the land would be on the market prior to sale. Hulberg opined that the Busch property had a \$25,000 per-acre value.

Applying the \$25,000 per-acre value to the 90 plus acres and rounding off, Hulberg arrived at a \$2,270,000 gross value. After a lengthy discussion of various discount concepts, Hulberg

⁴ The range of per-acre values after the decreases appears to reflect reductions in value ranging from 60 percent to 80 percent.

settled on the same discount employed by DeVoe (40 percent) and thereby concluded that decedent's one-half interest in the Busch property at the time of his death had a \$680,000 value.

$(\$2,270,000 \times .50 \text{ (half interest)} \times .40 \text{ (discount)}) =$
 $\$680,000 \text{ (rounded down)}).$

Steven Geller (Geller), respondent's expert, was hired to analyze the agreement between the Busch property owners and Ponderosa and determine the per-acre value based on that agreement. After reaching a value based on the agreement, he discounted that value to reflect the time value of the delay that was expected to be encountered in the closing process. Geller's approach was further limited to one of two fixed scenarios: One approach was to assume a closing of the entire property during June 1997 and the other was to assume two separate closings, one-half of the property during June 1997 and the other one-half during June 2000. Geller reached the conclusion that 360 units would be paid for at the closing(s) based on the Pleasanton Planning Commission's January 1997 approval of 360 units, a fact that was not known as of June 1994 or February 1993.

Using the \$150,000-per-acre contract price, with an additional \$50,000 times 110 units over 250 ($360 - 250 = 110$), Geller arrived at gross values of \$19,271,000 and \$22,225,895 for the single and dual closing models, respectively. Using a 9-percent discount rate to account for the passage of time until the closings, Geller concluded that the present value of the

Busch property as of the June 1994 agreement date was \$15 million, irrespective of whether a single or dual closing occurred. Geller's approach was an attempt at reaching a present value of the June 1994 agreement. By using a present value technique, Geller acknowledges that the June 1994 agreement was not a cash sale. Respondent relies on Geller's value as reflecting an actual and/or comparable sale that supports respondent's value determination in the deficiency notice. Respondent directs our attention to the fact that Geller's \$15 million value is slightly in excess of the gross value determined in the deficiency notice. It does not appear that respondent discounted for the fact that decedent held a partial interest.

Both parties used acceptable methodologies for valuing the subject property. Although the methodology was appropriate, we do not agree with all of the techniques, modifications, and/or discounts that were used to affect the ultimate proposed values. Hulberg, petitioner's expert, begins with comparables for residential development property and, by means of extremely large discounts, reduces the comparable to \$25,000 per acre. In this way, Hulberg advances a value for the Busch property that, essentially, represents a value for unimproved farmland. Hulberg expressed the view that the highest and best use of the Busch property was for residential development and that comparable sales provide the best method to value unimproved land. He then effectively voided those views by using extraordinary discounts

for what he thought was the likely possibility that there would be no approval for residential development. Hulberg's conclusion that residential development would not be approved was a fact that was not known or reasonably foreseen on the valuation date or at the time of the execution of the June 1994 agreement. It also ignores the fact that the Busch property was actively pursued by Ponderosa and other knowledgeable developers who placed a value far in excess of \$25,000 on the property. We do not accept Hulberg's \$25,000 opinion of value and find his approach to be nothing more than a disguised attempt to circumvent and ignore the highest and best use of the property at the time of valuation and to thereby value it as farmland.

Petitioner's advocacy of the \$25,000-per-acre value also ignores the fact that the Busch property abutted the city of Pleasanton and was adjacent to fully developed residential property. More importantly, petitioner did not deal with the fact that several developers were eager to develop the Busch property. In order to accept petitioner's/Hulberg's approach, we would have to conclude that Ponderosa (and the other developers who were interested in the property) were either unaware of or did not fully consider the difficulties that could have been encountered in obtaining approval of the property for development into residential property. Other developers offered \$150,000 per

acre and \$17 million.⁵ The fact that Ponderosa failed to obtain development approval approximately 4 years later was a fact that was not known to the parties to the June 1994 agreement. If Ponderosa had known or thought that approval was not forthcoming, it would not have committed its resources and substantial capital to the Busch property project. Also, as noted above, other developers expected that the property could be developed. In that regard, Ponderosa paid an amount approximating petitioner's proposed net value (\$680,000) in expenses pursuing development approval and in payments made to keep the June 1994 agreement open for development at a \$150,000 plus per-acre contract price.

The June 1994 agreement price of \$150,000 per acre represents a cash sale price between a willing buyer and willing seller. The June 1994 agreement, however, did not require Ponderosa to pay "cash on the barrel head". The agreement and trial testimony make it clear that both sides were aware of the foreseeable risks and the difficulties connected with obtaining approval for residential development. The political climate in Pleasanton was also well known to the parties to the June 1994 agreement. The comparable sales prices used by petitioner's appraiser for estate tax purposes and by its trial expert reflect that the \$150,000-per-acre price was reasonable when compared with similar properties susceptible of residential development.

⁵ The \$17 million bid was dependent upon the number of building lots approved.

Petitioner, by emphasizing what actually happened (especially in the 1997-98 timeframe), sought to show that it was unlikely that the property would be approved for development as residential property within the city of Pleasanton. We cannot, however, attribute to a 1993 or 1994 buyer or seller these unforeseen facts that occurred several years later--in this instance, 3 to 4 years later. Nor can we allow such facts to bear on value unless those facts could be foreseen, known, and would have influenced a willing buyer and seller. See United States v. Cartwright, 411 U.S. 546 (1973). For purposes of this case, the statute mandates a date-of-death fair market valuation. See sec. 2031(a). The determination of value is to be made as of the valuation date (i.e., date of death), and knowledge of unforeseeable future events that may have affected the value cannot be attributed to the hypothetical buyer or seller. See sec. 20.2031-1(b), Estate Tax Regs.

We find the 1994 agreement to be sufficiently contemporaneous to represent a benchmark value for the subject property, and it comports with comparable sales. As of decedent's death, it was likely that the Busch property would be sold for and/or developed as residential property. The 1994 agreement represents the usual type agreement entered into by Ponderosa and other developers. In that regard, both of petitioner's experts (DeVoe and Hulberg) used comparable sales that comport in price per acre with the price in the June 1994

agreement and that occurred within the time period surrounding the date of death and the June 1994 agreement.⁶ Petitioner's appraiser for estate tax purposes valued the property as development property. The estate included a discounted (for the partial interest) value that was based on its development as residential property. At the time its offer was made and accepted, Ponderosa was generally aware of the political conditions and possible problems that could be encountered in obtaining approval for development of the Busch property. Likewise, the sellers had consulted several sources of expertise and were aware of the value of their property and had the opportunity to choose from several different firms that were interested in a development type agreement. Petitioner and respondent agree that the "highest and best use" of the Busch property was residential development. The property physically abutted Pleasanton and existing residential housing. There was contiguous street access to the existing residential areas within

⁶ DeVoe's comparables are set forth in the body of this opinion. The four sales Hulberg offered as comparables had prices ranging from \$80,071 to \$245,701 per acre. A simple average of the four sales referenced in Hulberg's report is \$145,559. Hulberg, however, discounted the four sale prices by as much as 80 percent to reflect his view of the inability to obtain approval from the city of Pleasanton for residential development, causing the range to drop to \$16,014 through \$73,710. Accordingly, there is sufficient corroborative evidence to accept the \$150,000-per-acre price from the June 1994 agreement as a starting point for our consideration of the fair market value.

the city of Pleasanton. At the time of decedent's death, other Pleasanton residential developments were in progress.

The record reflects that, at the time of decedent's death, the climate for residential development in Pleasanton was weakening, and, to that extent, we agree with petitioner that the price that a willing buyer would offer to a willing seller would be affected. See, e.g., Estate of Ratcliffe v. Commissioner, T.C. Memo. 1992-305. Any such price differential, however, would normally have been accounted for in Ponderosa's offer and the acceptance of same. Ponderosa's offer, in effect, was not to pay \$150,000 per acre at the time the agreement was made, and it was contingent on acquiring approval to develop from Pleasanton. Ponderosa, aware of the risks, was willing to invest its money and time in pursuing development. In that regard, Ponderosa expended between \$500,000 and \$1 million in the form of payments to the sellers and expenses in pursuing the entitlements for residential development.

In order to adjust for the passage of time in connection with the difficulties expected in obtaining development approval, we must decide upon an appropriate discount rate to adjust the \$150,000-per-acre cash price. Respondent's expert used a present value approach to account for the delay in payment. Respondent's expert, however, applied the discount to a gross value inflated by attributing an optimum approval of 360 housing units. Geller started with the \$150,000-per-acre contract price and added

\$50,000 for each unit he expected to be approved in excess of 250. Geller's computation of the \$50,000 amounts for excess units was chosen based on the 1997 planning board approval for 360 units.⁷

We do not use the 360 housing unit approval figure because it was not foreseeable by the parties to the June 1994 agreement or as of the date of decedent's death. Considering property set asides for streets, utilities, and unusable portions, 250 units seems a reasonable estimate for a base figure. In addition, the parties to the June 1994 agreement used 250 as their base amount and provided for premium increases to the price to be paid only if approval for more than 250 units occurred. Normally a cash price is not discounted for the passage of time in the context of a fair market valuation as of a date certain. It would be appropriate, however, to discount the cash price here due to the expected time delay in obtaining approval for development.⁸ We note that the parties anticipated that the contract price should

⁷ In addition to the \$50,000 excess unit amounts, Geller factored in the \$10,000 and \$5,000 amounts, but we do not consider those part of the contract price because they appear to be payments to maintain the seller's rights and to compensate the buyer for keeping the property under contract. To some extent, those amounts address the question of time value and, accordingly, it would be duplicative to make them a part of the contract price or present value computation.

⁸ We assume that Ponderosa would not have entered into this contract unless it expected to gain approval, and any risk that approval would not be obtained was de minimis or remote.

be increased by about 9 percent per annum, and so they used a 9-percent factor.

Accepting a \$150,000 cash per-acre value, the 90.74 acres would produce a \$13,611,000 gross value. We accept the 9-percent discount rate and apply it to the agreement's contemplated two closings, to wit: no later than 3 and 6 years from June 1994. These closing dates represented outside limits, and the closings could possibly have occurred earlier. It was estimated that, as of June 1994, the entitlement process would, on a fast track, take about 1-1/2 years and, at the outside, 3 to 4 years. We use the 3- and 6-year dates (the limits of the June 1994 agreement) to account for the lapse of time until payment and account for the 1 year and several months by which the date of death preceded the June 1994 agreement. Because of the known difficulties expected to be encountered in the approval process, it is also reasonable to use the 3- and 6-year closing dates and discount one-half of the contract price to account for a 3-year delay and the other to account for a 6-year delay. Using a 9-percent discount rate, we hold that the present value of the \$13,611,000 contract price would be \$9,312,992 (present value of one-half of \$13,611,000 at 9 percent for a 3-year period (\$5,255,095) and one-half of \$13,611,000 at 9 percent for a 6-year period (\$4,057,897)).

As a final matter, we consider the appropriate fractional discount, if any, that should be applied to decedent's one-half

of the \$9,312,992 present value of the Busch property at the time of decedent's death. The need for employing a discount is dependent on whether decedent's partial interest would have an effect on marketability. See generally Propstra v. United States, 680 F.2d 1248 (9th Cir. 1982); Estate of Bright v. United States, 658 F.2d 999 (5th Cir. 1981). Petitioner bears the burden of showing that a discount is appropriate and the amount of any such discount. See Rule 142(a); Estate of Van Horne v. Commissioner, 78 T.C. 728 (1982), affd. 720 F.2d 1114 (9th Cir. 1983).

Both of petitioner's appraisers selected a 40-percent discount to adjust the value to account for decedent's one-half ownership in the Busch property. Petitioner argues that the expertise they have offered and respondent's failure to provide expertise to address this point should result in the Court's adopting a 40-percent discount. Petitioner also makes the argument that partition was not a viable option because of the 1982 experience of the Busch property owners in failing to obtain a division of the property into less than a 100-acre parcel for agricultural purposes.

Respondent counters that the highest and best use of the property was residential development, and the estate and its coowner chose to sell the entire property to a single purchaser. Respondent also notes that among the sales offered as comparables by petitioner's experts some smaller parcels appeared to be no

less valuable than larger ones. In addition, respondent contends that the growth management policies of Pleasanton might make approval more easily obtainable for a smaller parcel. Respondent also maintains that the Busch property was homogeneous, and, physically, it could be easily divided or partitioned. Respondent also contends that it is not axiomatic, as petitioner seems to argue, that any partial interest must be discounted. Finally, respondent contends that petitioner has not met the burden of showing the need for a discount and/or the size of any such discount.

The circumstances of this case call for some discount attributable to the fact that decedent held a partial interest. In that regard, decedent's one-half interest was an equal interest with that of his coowner, and the property owned was capable of development for residential purposes as two separate 45-acre parcels. Petitioner points out that during 1982 the coowners were not permitted to divide the property into two separate farms, but it was the county's 100-acre minimum agricultural use limitation that was the reason for the county's denial. No such acre limitation has been shown to exist for residential property. We agree with respondent's analysis that the proposed comparables reflect little premium or discount for the size of the parcel to be developed and that it might have been beneficial to have a relatively smaller parcel, considering Pleasanton's growth management policies.

We do not accept respondent's argument that no discount should be employed because the coowners were cooperative and jointly sought to find a buyer for the Busch property. That is a matter of conjecture, and if a buyer purchased decedent's one-half interest, there is no showing here that decedent's sister-in-law's trust would have cooperated with any coowner, including decedent's estate. More significantly, the coowners' intentions were discernable as of the date of decedent's death. It was obvious that the owners and/or heirs to the Busch property were not interested in continuing its agricultural use. Accordingly, we conclude that some discount for the partial interest is called for; the question that remains is the size of that discount.

DeVoe's partial interest discount was based on five of the nine comparable sales and ranged from 18.8 percent to 45 percent. Two of the five involved 50-percent interests, and they had discounts ranging from 27.5 percent to 45 percent. DeVoe concluded that those two sales showed that a large fractional interest resulted in a larger discount, and he concluded that a 40-percent discount was appropriate. DeVoe, however, did not explain what aspects of the two sales relied on were comparable to the circumstances we consider involving the Busch property.

Hulberg discussed several factors in also arriving at a 40-percent discount for the fractional interest decedent held in the Busch property. First, he explained that a fractional interest reflected a lack of control. Although decedent's interest was

not a majority interest, his coowner's interest was equal, and so neither had a majority or minority. As a result, neither had control, and both were equal. Hulberg has treated the coownership of real property here as though the coowners were in a partnership relationship, thereby elevating the question of control. It does not appear that the coowners operated a business (farming or otherwise) as partners, and, accordingly, control is less relevant. This is a common interest in undivided and unimproved property, and the question to consider is the feasibility of dividing the property in the case of disagreement about its use. In that regard, costs of partition or other legal controversy, along with other factors, are considerations rationally involved in the valuing of an asset. See Estate of Bonner v. United States, 84 F.3d 196, 197 (5th Cir. 1996).

Hulberg opined that partition was feasible under California law, but that the "ability to partition the property would not substantially decrease the discount presented by partnership sales, as such actions could involve a great deal of expense and delay prior to the liquidation of [a] co-tenancy interest." We cannot accept Hulberg's premise as a universal principle because it ignores economies of scale and the relative value of the property. For example, assuming a legal cost for partition of \$200,000,⁹ a \$680,000 parcel (as Hulberg opined) might fit the

⁹ Two hundred thousand dollars, assuming a \$200 hourly legal
(continued...)

above-quoted principle. A parcel, one-half of which had a value of \$3 million to \$4 million, would easily bear a \$200,000 partition cost. In addition, as of decedent's death, his coowner's share was held in trust for the 97-year-old widow of the former owner, and neither owner was a resident-farmer at that time. The beneficial owners were the heirs of the owner/farmers who were not actively farming the property. Those circumstances, known at the time of decedent's death, make it less likely that partition would be necessary. That is especially so where great disparity exists between the values of the land when comparing its use for agricultural and residential purposes.

Hulberg used a conglomeration of four different approaches to arrive at the amount of discount he used to account for decedent's partial interest. First, he discussed a "Company Survey Method", which Hulberg described as a "survey of companies in the business of purchasing and selling partnerships." Our review of Hulberg's analysis indicates that the partnerships involved were dissimilar to the Busch property situation. The information was derived from the purchase and sale of general partnership interests, a format different from the Busch property ownership, which was simply a coownership in real property with no partnership business or operational type activity.

⁹(...continued)
fee rate, represents 1,000 hours to accomplish partition.

Accordingly, the discount percentages represented by that type of transaction are inapposite.

Next, Hulberg addressed what he called the "Fractional Discounting Method". That method was set out in an April 1992 journal article, Davidson, "Fractional Interests in Real Estate Limited Partnerships, The Appraisal Journal, Apr. 1992, at 184-194, in which 10 factors were used to analyze the amount of a fractional interest discount. The factors employed, include: "Relative risk of the assets held, Historical consistency of distributions, Condition of the assets, Market's growth potential, Portfolio diversification, Strength of management." Those factors, to which Hulberg assigned values to arrive at an estimated 41-percent discount, appear to be the type of factors that are used in analyzing a going partnership business and not the simple coownership of raw land. The remaining four factors address the control aspects, or lack thereof, of a fractional or , partial interest. Of the cumulative 41-percent discount reached by Hulberg, only 12 percent of it was attributable to the lack of marketability/control factors. The remaining factors depended heavily on the fact that the entity was a going partnership (income sources, etc.) and would, therefore, not be applicable to measure the partial interest discount in this case.

Next, Hulberg used a "REIT Survey Method" that "involves an analysis of discounts found in real estate investment trust (REIT's)." Hulberg indicated that the average discount was 39

percent with a range from 30 percent to 40 percent. Here, again, Hulberg's explanation reflected that REIT's are operating real estate partnerships that are dissimilar from the simple coownership of realty that we consider. The REIT is an entity in which investors purchase a percentage as an investor in the activity or business operation in which the REIT is involved. Accordingly, the REIT-based approach to calculate a discount is not appropriate.

Finally, Hulberg referred to his four proposed comparable sales that he admits "are not highly similar to the subject property but they do indicate discounts are being taken by the [purchasers] of * * * fractional interests, and that there is a market for partial interests in a property." The range of discounts was 29 percent to 41 percent. The sales selected by Hulberg included a produce terminal, undeveloped unapproved land, an office building, and ranchland. The undeveloped unapproved land was described as "Standard Oil Pond Grizzly Island (Solano Co.)", and Hulberg explained that the property was valued at \$800,000 for a fee and a 25-percent interest was sold for \$130,000. No further information is provided, and it is not apparent that this property is comparable or how the \$800,000 and \$130,000 values relate to each other. Accordingly, we do not find these examples to be helpful.

Hulberg then proceeded to conclude that the various referenced approaches resulted in discounts approximating 40

percent and that 40 percent is therefore appropriate. Hulberg, in addition to addressing the lack of approval for residential development, factored in the lapse of time in arriving at a 40-percent discount rate. We did not find any of Hulberg's approaches to be fitting or appropriate to the situation we consider, although we agree that some discount would be appropriate. In summary, Hulberg first discounted by as much as 80 percent, and then discounted the resulting amount by an additional 41 percent reflecting various factors, including lack of control, passage of time, and factors that would only be relevant in the consideration of a going partnership.

On the other hand, DeVoe, petitioner's appraiser who was used to provide a value for the estate tax return, started with a \$137,500-per-acre value and discounted it by 40 percent to account for the partial interest. That approach resulted in a \$3,810,000 value's being reported on the estate tax return. We have concluded that the per acre cash value is \$150,000 and have discounted that amount to account for the passage of time and, to some extent, for the risk associated with the possibility that approval for development might not be obtained. That discount resulted in reducing the value of decedent's one-half interest from \$6,805,500 ($\$150,000 \times 90.74 \times .50$) to \$4,656,496 (see present value computations, supra, p. 28) or a reduction of 31.6 percent. Based on our evaluation of the evidence, it appears that DeVoe's valuation appraisal was conservatively performed

favoring decedent's estate. We reach that conclusion because he used a per acre value at the lower ranges of the true comparables and a discount rate at the highest end of the spectrum when considering the facts in our record.

A smaller partial interest discount than used by petitioner's appraisers would be appropriate in the circumstances of this case. As already noted, as of decedent's death, there were no owners or potential owners who, like decedent and his deceased brother/coowner were solely interested in farming the land. The heirs of both owners were interested in selling or developing the land in light of the substantial difference in its value for that use. At the date of decedent's death, his coowner was a trust for a 97-year-old woman, and there was no doubt that the highest value of the land was as residential property. Under these circumstances a 10-percent discount would be sufficient to account for the partial interest represented by a simple coownership in unimproved land. As already discussed, 10 percent would also be more than adequate to accommodate reasonable costs of partition (10 percent of the rounded one-half interest (\$4,660,000) or \$466,000) in the event that either set of heirs of the then-current coowners might not be interested in selling the property for its highest and best use (residential development).¹⁰

¹⁰ The use of a 10-percent discount for the partial interest
(continued...)

We accordingly hold that the fair market value of decedent's one-half interest in the Busch property at his date of death is \$4,190,496 ($\$9,312,992 \times .50 = \$4,656,496 - \$466,000 = \$4,190,496$).¹¹

To reflect the foregoing,

Decision will be entered under

Rule 155.

¹⁰(...continued)
results in an overall discount from the \$150,000 value for decedent's one-half interest of 38.4 percent.

¹¹ Because we have held that the fair market value that should have been included in decedent's gross estate exceeds the amount reported by the estate, it is not necessary to consider respondent's contention that we are without jurisdiction, in the circumstances of this case, to decide an overpayment in estate tax.